



Planning Commission Minutes

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note the public testimony may be limited by the Chair.

August 25, 2026

REGULAR MEETING

DRAFT Minutes

I. CALL TO ORDER:

Chair Verner called the meeting to order at 7:00 p.m. at the Civic Center Council Chambers, 1175 E. Main Street.

Commissioners Present:

Lisa Verner
Jay Lininger
Kerry KenCairn
Susan MacCracken Jain
John Maher
Eric Herron

Staff Present:

Brandon Goldman, Community Development Director
Derek Severson, Planning Supervisor
Michael Sullivan, Executive Assistant

Absent Members:

Russell Phillips

Council Liaison:

Jeff Dahle (via Zoom)

II. ANNOUNCEMENTS

1. Staff Announcements

Community Development Director Brandon Goldman made the following announcements:

- At its August 18th meeting the City Council approved first reading of Ordinance 3307 (Senate Bill 974 / HB 4307 / HB 2138 compliance package), but did not adopt the Planning Commission's prior recommendations regarding the 20-lot threshold or the tiered notice area approach.
- The Council directed Councilors Sherrell and Dahle to draft broader housing code amendments covering 18 identified areas, with a Planning Commission hearing scheduled for November 10th and Council consideration on November 17th.

2. Advisory Committee Liaison Reports – None

III. CONSENT AGENDA

Approval of Minutes

1. August 11, 2026 Regular Meeting

Commissioners Maher/Lininger m/s to approve the consent agenda as presented. Commissioner MacCracken Jain abstained due to her absence from the August 11th meeting. Voice Vote: Commissioners KenCairn, Maher, Lininger, Herron, and Verner: AYE. Motion Passed 5-0.





Planning Commission Minutes

IV. **PUBLIC FORUM** – None

V. **LEGISLATIVE PUBLIC HEARING – CONTINUED**

PLANNING ACTION: PA-L-2026-00020

APPLICANT: City of Ashland

ORDINANCE REFERENCES: AMC 18.5.3.060: Additional Preliminary Flag Lot Partition Plat Criteria

REQUEST: The proposal before the Planning Commission is a draft ordinance amending AMC 18.5.3.060 to establish a variance process for flag drive and driveway grades serving legal lots of record created before the City adopted its Hillside Development Standards in 1997, and a request to forward a recommendation to the City Council. The amendment was originally included in the Senate Bill 974 implementation package (draft Ordinance No. 3307) and has been separated into a standalone ordinance, draft Ordinance No. 3309, so that it can be considered on its own merits.

Chair Verner noted that a number of public comments had been submitted into the record after the packet had been posted (see attachment #1), as well as a memo that had been provided by Commissioner Lininger (see attachment #2).

Staff Presentation

Planning Supervisor Derek Severson summarized the revised draft ordinance language distributed in the staff report. Key provisions included: a general 15% grade standard (F1); a variance up to 18% for lots created after 1997 (F2); a variance potentially up to 25% for pre-1997 lots of record (F3, with the upper limit presented as an option for Commission consideration); a 200-foot cumulative length limitation on sections exceeding 15% (F4); fire code compliance requirements (F5); and tailored variance criteria referencing engineer-stamped drawings and site-specific conditions (F6). Staff also addressed the question of ownership triggers, recommending against tying relief to continuous ownership since land use rights in Oregon customarily run with the land, not with a particular owner (see attachment #3).

Questions of Staff

Commissioners asked clarifying questions regarding the variance process under AMC 18.5.5, fire code review, the 200-foot length limit, and the scope of the 13 potentially affected lots. Staff confirmed that variances would be application-specific, that the fire code official would provide a recommendation in every case, and that the 200-foot standard was drawn from existing code. Staff further noted that all prior variances exceeding 18% had been approved on the interpretation that the flag drive standard applied only to newly created lots—an interpretation LUBA rejected in April 2026. Commissioner KenCairn noted that she had personally processed three to four such variances in the past under that prior interpretation.





Planning Commission Minutes

Commissioner Herron asked whether the 13 lots were held by multiple different owners; staff confirmed they were spread among individual owners, with some owned by neighboring property owners.

Public Comments

The following speakers spoke in opposition to the ordinance:

- Jay Reeck via Zoom
- Emil Sadofsky, representing Hutchinson Cox via Zoom
- Ronald Parker – Mr. Parker stated that his written submittal had not been included in the meeting packet materials. **Note:** Mr. Parker's written comments were received on August 10th by staff and forwarded to the Planning Commission that same day as a late addition to the August 11th Planning Commission meeting packet.
- Troy Brown
- David Oursler

Chair Verner closed the Public Hearing and Public Record at 7:51pm.

Deliberations and Decision

Commissioner KenCairn expressed support for some form of variance procedure, asserting that pre-1997 lots had been rendered effectively unbuildable by LUBA's ruling and that requiring a variance process was not special treatment, but rather a recognition of a longstanding gap in the code.

Commissioner Maher delivered an extended statement urging rejection of the ordinance. He argued that the amended language remained substantively the same as what the Commission unanimously rejected on August 11th; that the proposed 25% cap and 200-foot length limit appeared sized to fit a single known application; that seven of the thirteen lots had changed hands since 1997; that these lots are not counted in the City's buildable lands inventory or needed to meet housing capacity goals; that variance decisions on such lots would largely be made administratively with no public right of appeal; and that Ashland's prior experience with development on Granite Street illustrated the community disruption such development could cause. He concluded that the ordinance was unnecessary and contrary to the comprehensive plan, the Community Wildfire Protection Plan, and the Housing Capacity Analysis.

Commissioner Lininger stated that some variance procedure was warranted to protect the City from a plausible federal takings claim, since lots platted to abut a public road carry a common-law right of access that cannot be extinguished without compensation. He also noted that the related Oregon Court of Appeals case (Eisenberg) had oral argument two days prior to this meeting and remained pending, suggesting the Commission allow time for that decision before finalizing a recommendation.





Planning Commission Minutes

He emphasized his preference for a variance procedure with a clear and objective cap consistent with the Comprehensive Plan.

Commissioner Herron asked whether the City Attorney had weighed in on the taking question; staff confirmed that the City Attorney's office, while not present at this special meeting, had advised that grandfathered rights run with the land rather than with ownership, consistent with the staff report.

Commissioners Maher/KenCairn m/s to recommend to the City Council that no ordinance amendment be made. Roll Call Vote: Commissioners KenCairn, Maher, and Verner: AYE. Commissioners Lininger, Herron, and MacCracken Jain: NAY. Motion Failed 3-3.

Commissioners Lininger/KenCairn m/s to recommend that the City Council approve first reading of draft Ordinance No. 3309 as amended in the August 25th staff report.

AMENDMENT #1: Commissioners KenCairn/Maher m/s to amend the motion to change the upper grade cap in Section F3 from 25% to 20% with a variance.

DISCUSSION OF THE AMENDMENT: Commissioner MacCracken Jain requested clarification on the reasoning for the 20% limit. Commissioner KenCairn responded that this is consistent with the existing precedent and her own experience.

Roll Call Vote on Amendment #1: Commissioners Lininger, KenCairn, and Verner: AYE. Commissioners Herron, Maher, and MacCracken Jain: NAY. Motion Failed 3-3.

AMENDMENT #2: Commissioners Maher/Lininger m/s to reduce the cumulative length limit in Section F4 from 200 feet to 100 feet.

DISCUSSION OF THE AMENDMENT: Commissioner Herron stated that the Commission should exercise caution to avoid prejudice against any particular property. Commissioner Lininger noted that this is a recommendation to Council, which will have its own deliberations, as will the Oregon Appeals Court of the Eisenberg case.

Roll Call Vote on Amendment #2: Commissioners Lininger and KenCairn: AYE. Commissioners Herron, Maher, and MacCracken Jain, and Verner: NAY. Motion Failed 2-4.

Roll Call Vote on Original motion: Commissioners MacCracken Jain, Lininger, and Verner: AYE. Commissioners Herron, KenCairn, and Maher: NAY. Motion Failed 3-3.

Commissioners Lininger/Herron m/s to reopen the Public Record and to continue the Public Hearing to the September 8th Planning Commission meeting.

DISCUSSION OF THE MOTION: Commissioner Maher expressed concern that reopening the record would invite additional attorney correspondence, while Commissioner Lininger clarified that the purpose was deliberative rather than to solicit new testimony. Staff confirmed that continuing deliberation with the record closed was also an option, but noted that any input from the City Attorney would technically constitute new information in the record if submitted in writing and



Planning Commission Minutes

necessitate the record being reopened in order to be submitted. Commissioner Lininger withdrew the motion, but Commissioner Herron declined to withdraw his second and after further discussion Commissioner Lininger reasserted his support for the motion.

Roll Call Vote: Commissioners MacCracken Jain, Lininger, KenCairn, Herron, and Verner: AYE. Commissioner Maher: NAY. Motion Passed 5-1.

The Public Record was reopened at 8:53pm and the Public Hearing was continued to the September 8th Planning Commission meeting.

The Commission requested that a member of the City Attorney's office attend the September 8th meeting or that a written response be provided. Mr. Goldman stated that a request could be made but that both would be up to the discretion of the Legal Department.

Commissioner MacCracken Jain called attention to the large number of public comments that were submitted prior to the meeting, stating that their late submittal gave little time for the Commission to review them. Mr. Goldman noted that public comments can be submitted right up to or during public meetings.

VI. **OPEN DISCUSSION** - None

VII. **ADJOURNMENT**

Meeting adjourned at 8:55p.m.

*Submitted by,
Michael Sullivan, Executive Assistant*

Planning Action PA-L-2026-00020

From Molly Killefer <mollykillefer@gmail.com>

Date Sat 8/22/2026 1:07 PM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>; Derek Severson <derek.severson@ashland.or.us>

[EXTERNAL SENDER]

Good Day. My husband and I are very distressed over the city attempting to allow the owners of 231 Granite St. to install a 25% grade driveway, which is against code. We absolutely oppose the proposed amendments to the flag drive standards in the Ashland Municipal Code ALUO 18.5.3.060.F. (Ordinance #3309, Planning Action PA-L-2026-00020).

The city wouldn't allow others with less status, money, or donating ability to build this sort of driveway.

The proposed changes are **still** inconsistent with state law, with the City of Ashland's Comprehensive Plan, and

with the City of Ashland's 2025 Community Wildfire Protection Plan.

To appease one wealthy family, it is criminal that you are choosing to put at risk the health and safety of our neighbors, our first responders, our community, and our environment,

I respectfully request that the Planning Commission take morally correct and **once again** reject Ordinance #3309/Planning Action PA-L-2026-00020.

Molly and Peter Killefer

Planning Action PA-L-2026-00020

From Jane Andrianova <spiritualdances@gmail.com>

Date Sat 8/22/2026 2:21 PM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>; Derek Severson <derek.severson@ashland.or.us>

[EXTERNAL SENDER]

Dear Planning Commission Members,

I am writing to oppose the proposed amendments to the flag drive standards in the Ashland Municipal Code ALUO 18.5.3.060.F. (Ordinance #3309, Planning Action PA-L-2026-00020).

On August 11, 2026 the Planning Commission unanimously rejected the proposed amendments and understood that community safety and risk mitigation were top concerns. Even after the vote and substantial, compelling public testimony in objection to the amendments, the City staff is still asking the Planning Commission to consider a revised proposal to allow excessively steep and dangerous driveways.

The proposed changes are **still** inconsistent with state law.

The proposed changes are **still** inconsistent with the City of Ashland's Comprehensive Plan.

The proposed changes are **still** inconsistent with the City of Ashland's 2025 Community Wildfire Protection Plan.

With no upper limit of driveway grade, or even an extreme upper limit of 25%, the proposed changes would **still** allow flag driveway grades far steeper than any other jurisdiction in Oregon. This will endanger Ashland citizens, first responders, and the environment.

The proposed changes are **still** internally inconsistent, simultaneously prohibiting and allowing flag lot driveways steeper than 18%.

The City's proposal would **still** apply to only 13 lots in the entire city, endangering the entire community for the benefit of very few--and only 6 of these are held by the same owners since December 1997.

The City's revised proposal **still** leaves the ultimate decision on each variance request in the hands of the Fire Code Official.

In the interest of the health and safety of our neighbors, our first responders, our community, and our environment, I respectfully request that the Planning Commission **once again** reject Ordinance #3309/Planning Action PA-L-2026-00020.

Sincerely,

Evguenia Andrianova
264 W. Hersey Street, Unit 5
Ashland, OR

Planning Action PA-L-2026-00020

From Leonard Eisenberg <evogeneao@gmail.com>

Date Sun 8/23/2026 8:55 AM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>; Derek Severson <derek.severson@ashland.or.us>

[EXTERNAL SENDER]

Greetings Planning Commissioners,

We strongly oppose the proposed changes to the flag drive standards in the Ashland Municipal Code ALUO 18.5.3.060.F. (Ordinance #3309, Planning Action PA-L-2026-00020).

We note that at the August 11, 2026 Planning Commission meeting, the commissioners unanimously voted to reject the proposed changes. Even after the vote and substantial public testimony opposing the proposed changes, City staff is asking the Planning Commission to consider a revised proposal to allow excessively steep and dangerous driveways.

We note that the proposed revised changes are inconsistent with state law, are inconsistent with the City of Ashland's Comprehensive Plan, and are inconsistent with the City of Ashland's 2025 Community Wildfire Protection Plan.

We note that with no upper limit on driveway grade, or even an extreme upper limit of 25%, the proposed revised changes would allow flag driveway grades far steeper than any other jurisdiction in Oregon. The current driveway grade standards in Oregon have limits for a reason; for the safety of first responders, neighbors and the community at large. The current standards in Ashland and elsewhere in Oregon have served citizens well, and we think they should be maintained unchanged.

We note that the proposed revised changes are internally inconsistent, simultaneously prohibiting and allowing flag lot driveways steeper than 18%, and that the ultimate decision on each variance request would be in the hands of a single individual, the Fire Code Official.

We note that the proposed revised changes would apply to only 13 lots in the entire city, and that only 6 of these are held by the same owners since December 1997, when the more restrictive Ashland Hillside Development Standards ordinance was enacted. We don't think that endangering our first responders and the entire community for the benefit of very few is fair or appropriate.

We could see how it might be acceptable to grant an exemption to the six owners who purchased prior to 1997, but not for those who purchased lots after 1997.

A better option is for the city to purchase the lots from the owners who purchased prior to 1997. That would be fair to the owners and lessen the danger to first responders and the community.

To that end, we would be willing to either purchase a lot ourselves and donate it to the city for undevelopable open space, or donate up to \$300,000 to the city for them to purchase a lot, on the condition that the lot be designated undevelopable open space.

We are all for increasing the housing supply in Ashland, and have built or refurbished 7 homes in Ashland, adding eight bedrooms to the housing stock.

If Ashland was truly interested in increasing the housing stock, especially affordable housing, the city would consider our proposal to turn the Oak Knoll golf course into a nice manufactured home park, like the one on Clay Street. We submitted a detailed proposal to a city commissioner some years ago, but did not get a response. We'd be happy to send the proposal text and maps to any city official interested.

In the interest of the health and safety of our neighbors, our first responders, our community, and our environment, we respectfully request that the Planning Commission once again reject Ordinance #3309/Planning Action PA-L-2026-00020.

Sincerely,

Len and Karen Eisenberg
223 Granite Street
Ashland, Oregon 97520

Planning Action PA-L-2026-00020

From Cindy Peer <cpeer@pchaninc.com>

Date Mon 8/24/2026 9:34 AM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

[EXTERNAL SENDER]

P. Chan & Edward, Inc.

----- PRINTING -----

Cindy Peer

1467 Siskiyou Blvd - 423

Ashland, OR 97520

Cell: (208) 610-8585

Web: pchaninc.com

August 24, 2026

Attn: Planning Committee:

I have been following this case regarding the proposed code changes on the Hillside Development Standards. It seems that the slope standard was well established, and now these changes are proposed because of one property owner is wanting to build on a steep slope?

I would hope that you will reconsider how this is resolved.

From what I understand: the City is now proposing to change the code to remove limitations on gradients of ALL 13 lots, even those purchased after 1997 when Hillside Development Standards and their inherent code limitations on driveway gradients were known. The revised language will still allow 231 Granite Street (purchased in December 2023) to have an average 24% slope when the standard has been 15% (in some cases 18%) since 1997.

Thank you.

Cindy Peer

Planning Action PA-L-2026-00020

From Carey Mastain <carey.mastain@gmail.com>

Date Mon 8/24/2026 10:38 AM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>; Derek Severson <derek.severson@ashland.or.us>

[EXTERNAL SENDER]

To: Ashland Planning Commissioners

From: Carey Mastain, 227 Granite St., Ashland, OR

Re: Proposed Amendments to Ashland Municipal Code ALUO 18.5.3.060.F

Date: August 24, 2026

Greetings again to the Ashland Planning Commissioners,

I attended your last meeting - on August 11, 2026 - and spoke at the podium in opposition to the proposed amendments regarding flag lot driveway gradient regulations. I am out of town and too technologically timid to attempt a zoom platform at tomorrow's meeting. So I am writing to you again.

I was so pleased with your 5-0 vote to reject the amendments! Great job! ("Wow! The commissioners listened to our objections and decided to follow the rules!" I thought to myself.)

BUT THEN YOU VOTED TO CONTINUE THE DISCUSSION! You had a perfect opportunity to drop the whole long attempt to acquiesce to a wealthy Ashland resident... and you missed it!

But don't despair! You get a second chance to do the right thing on August 25, when you will again consider an amendment in favor of favoritism and bending the rules for the benefit of someone who has a sense of entitlement and elitism.

It is not fair to bend the state and local regulations regarding maximum gradient allowances. It's as simple as that.

The two main questions to ask are as follows:

What is fair and equitable and safe?

Why would anyone vote to bend the rules so drastically when every other town and city in Oregon follows the state regulations and, especially, in light of the fact that we are in far more fire danger than we were in 1997?

The answer to the first question is to reject the new amendments just as you rejected the previous ones.

The answer to the second question is **favoritism** and a belief that wealthy people should have special privileges OR some sort of kick back or quid pro quo is going on.

I could repeat the list of all the regulations which any new amendments seek to break, but I know you are well aware of them. So my appeal is to your sense of fairness and equity. Do the right thing!

Respectfully submitted,

Carey Mastain

Planning Action PA-L-2026-00020

From Pam McLaughlin <dreamweaver@ashlandcreek.net>

Date Mon 8/24/2026 11:20 AM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

[EXTERNAL SENDER]

I vehemently oppose changing the Ashland Municipal Code to allow flag drive grades in excess of 15%-18%. These guidelines were created in 1997 and are still more generous than most if not all other jurisdictions in Oregon. Our wildfire threat has only increased during recent years and if anything we should consider reducing the limits to both driveway grade and slope in recognition of Ashland's increasing vulnerability. Anything that makes it more difficult for emergency vehicles to access properties endangers us all. Of the 13 flag lots created before 1997, only 6 are still owned by the original owner or family member. It seems reasonable to allow exceptions to the owners of these 6 lots since they pre-date the 1997 ordinance. However, the lot for the residence in question was purchased in December 2023, AFTER these restrictions were already in place. We should not abandon our standards for this one project or others that will surely follow.

In addition, an argument has been made that this building should be allowed to help relieve the housing shortage in Ashland. This is preposterous. Allowing the construction of one very large home, with swimming pool and numerous terraces, exceeding current City standards both with regard to driveway length (in excess of 200 feet) and slope (averaging 24%) is in NO WAY helping to ease the lack of affordable housing in Ashland.

I urge you to stay true to the current Hillside Development Standards.

Respectfully,
Pamela McLaughlin
234 Strawberry Lane
Ashland

Planning Action PA-L-2026-00020

From curtcrock@sbcglobal.net <curtcrock@sbcglobal.net>

Date Mon 8/24/2026 11:43 AM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>; Derek Severson <derek.severson@ashland.or.us>

[EXTERNAL SENDER]

Dear Planning Commission Members,

I am writing to oppose the proposed amendments to the flag drive standards in the Ashland Municipal Code ALUO 18.5.3.060.F. (Ordinance #3309, Planning Action PA-L-2026-00020).

On August 11, 2026 the Planning Commission unanimously rejected the proposed amendments and understood that community safety and risk mitigation were top concerns. Even after the vote and substantial, compelling public testimony in objection to the amendments, the City staff is still asking the Planning Commission to consider a revised proposal to allow excessively steep and dangerous driveways.

The proposed changes are **still** inconsistent with state law.

The proposed changes are **still** inconsistent with the City of Ashland's Comprehensive Plan.

The proposed changes are **still** inconsistent with the City of Ashland's 2025 Community Wildfire Protection Plan.

With no upper limit of driveway grade, or even an extreme upper limit of 25%, the proposed changes would **still** allow flag driveway grades far steeper than any other jurisdiction in Oregon. This will endanger Ashland citizens, first responders, and the environment.

The proposed changes are **still** internally inconsistent, simultaneously prohibiting and allowing flag lot driveways steeper than 18%.

The City's proposal would **still** apply to only 13 lots in the entire city, endangering the entire community for the benefit of very few--and only 6 of these are held by the same owners since December 1997.

The City's revised proposal **still** leaves the ultimate decision on each variance request in the hands of the Fire Code Official.

Should a fire breakout in this neighborhood, the City is putting itself at fiscal and legal risk in the event of loss of property and/or life due to the proposed amendments and how they would affect the response and/or effectiveness of emergency services during a catastrophic event.

In the interest of the health and safety of our neighbors, our first responders, our community, and our environment, I respectfully request that the Planning Commission **once again** reject Ordinance #3309/Planning Action PA-L-2026-00020.

Sincerely,

Curt Chappell
131 Helman Street

Aug. 25th 2026: PA-L-2026-00020

From gshaff@gmail.com <gshaff@gmail.com>

Date Mon 8/24/2026 1:07 PM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

[EXTERNAL SENDER]

Keep the existing 15% maximum. The public safety implications of allowing steeper driveways will impact, potentially, the entire community in the event a fire starts on a property subject to the hillside ordinance.

There are only 13 properties subject to the hillside ordinance, according to the Planning staff's research. It doesn't make sense to endanger the entire community for the benefit of so few. After all, there is an exception process for those who can demonstrate hardship.

The change, if adopted, would have negligible impact on Ashland's housing supply. Alternatively, the city should allow tri- and fourplex units in the city's single family dwelling districts, as Medford has. That is the way to stimulate affordable housing as opposed to loosening development in steep hillside areas which would only serve the affluent.

Gary Shaff
Ashland

PA-L-2026-00020

From John Kloetzel <kloetzel@umbc.edu>

Date Mon 8/24/2026 2:21 PM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>; planning
<planning@ashland.or.us>

Cc Rep.PamMarsh <Rep.PamMarsh@oregonlegislature.gov>

[EXTERNAL SENDER]

I previously submitted a comment expressing my concern about a proposed change in the ordinance addressing flag drive grades (copied below). I hear that now the issue will be discussed on August 25 at a public hearing — extending the period for the expression of public concerns.

Once again I reiterate my fears (more than mere concerns) that for reasons unclear the City is taking seriously a proposal to allow one private party a quite significant variance in a proposed driveway into a homesite on their property. And because that private party has considerable influence in the community (and likely has made significant financial contributions to projects and charities of importance to the City and the region), it seems possible that they will be granted an variance exception that would not be available to the average citizen here — essentially buying an exception to the City code. And having the final decision possibly residing in the hands of one person, the fire code official, puts intense and undue pressure on that individual.

There is no way around my continuing fear that due to limitations a steep drive would pose to access by fire fighting equipment, and the ever-present danger of wildfire in the Ashland watershed, making an exception to the City Code is taking an unnecessary gamble with our future here as Ashlanders. We cannot ignore the example of the Alameda fire just six years ago.

Thank you for your consideration.

John Kloetzel
Ashland
541 613-0785

My original public comment:

I understand that the Planning Commission is considering a variance to the city code to permit the construction of a long, very steep driveway for access to a proposed home site overlooking Granite Street above Lithia Park. Knowing that the steep hillside up there above Strawberry is heavily treed and sparse with developed home sites, it seems that rapid access to the area by fire engines has to be considered critically important in the case of wildfire. If that drive is truly designed to be a 24% gradient, that could be well above what that fire equipment is designed to handle. And given the speed with which wildfires can spread (especially in windy conditions, as

we've seen firsthand locally) it seems that to grant such a variance to a single private party is gambling with an increased chance of potential wildfires in the Ashland watershed — and is foolhardy.

****JAK****

John A. Kloetzel, Ph.D.
Associate Professor, Emeritus
Department of Biological Sciences
University of Maryland Baltimore County (UMBC)
Phone: 541.613.0785
kloetzel@umbc.edu

"We are not an endangered species ourselves yet, but this is not for lack of trying."
-- Douglas Adams, author (1952-2001)

"Half the world is composed of people who have something to say and can't, and the other half who have nothing to say and keep on saying it." --Robert Frost [Can't argue with anything but that 1:1 ratio! --JK]

"There is nothing more frightful than ignorance in action." —Johann Wolfgang von Goethe

"Violence is the last refuge of incompetence." -- Isaac Asimov

Planning Action PA-L-2026-00020

From Catherine Ellison <cmellison@comcast.net>

Date Mon 8/24/2026 2:44 PM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

Cc Derek Severson <derek.severson@ashland.or.us>

[EXTERNAL SENDER]

Attachment available until Sep 23, 2026

Dear Planning Commission Members,

I am sending you a note about my opposition to the proposed amendments to the flag drive standards in the Ashland Municipal Code ALUO 18.5.3.060.F (Ordinance #3309, Planning Action PA-L-2026-00020).

On 8/11/2026 the Planning Commission unanimously rejected the proposed amendments and understood that community safety and risk mitigation were top concerns. Even after the vote and substantial, compelling public testimony in objection to the amendments, the City staff is still asking the Planning Commission to consider a revised proposal to allow excessively steep and dangerous driveways.

The proposed changes are STILL inconsistent with the City of Ashland's Comprehensive Plan.

The proposed changes are STILL inconsistent with state law.

The proposed changes are STILL inconsistent with the City of Ashland's 2025 Community Wildfire Protection Plan.

With no upper limit of driveway grade, or even an extreme upper limit of 25%, the proposed changes would STILL allow flag driveway grades far steeper than any other jurisdiction in Oregon. This will endanger Ashland citizens, first responders, and the environment.

As a homeowner who resides on Iowa Street near Terrace Street (a 24% grade of a city street) in the City of Ashland, I have had the personal opportunity to experience several disasters which occur on such a steep grade in the winter. I don't think it matters whether the street or driveway is public or private, it still needs to be accessible by first responders in all types of circumstances.. Visitors and first responders to a private property fed by a driveway which exceeds the legal grade are put at great risk.

On a more personal note, for the past several winters when we have had snowfall, citizens of our town try to drive up the Iowa Street 24% grade with serious consequences. Winter of 2023 a nice BMW SUV

slid backwards from the top of Iowa up near Terrace, completely out of control and crashed into my own car parked in my own driveway. Luckily no one was hurt. It took a month and many thousands of dollars to repair everything. As well, because of no traction in winter, people have parked their cars in my driveway or blocking my driveway when they're unable to get up the hill. They have left the vehicles there because of the snow and no traction. Another incident involved a local attorney who couldn't ascend the steep hill due to poor tires, etc. thus he parked below my driveway. A later driver without traction, drove to the top of the hill and slid backwards all the way down crashing into his car and again blocking my driveway overnight. If I had had a medical emergency, I would not have been able to get out. My neighbors one house down the hill have had their brick wall knocked out every couple of years because of people misjudging Iowa Street and sliding into the landscape. My boxwood hedge has been taken out every couple of years as well. I envision a steep one lane private driveway with a 24% grade, or really anything cheaper than the legal limit, and snowy conditions, especially could block emergency access.

Oh and by the way I have footage of a City of Ashland snowplow truck spinning out in the snow 2/3/2025 on Iowa street on the 24% grade.... Even THEY couldn't serve the community due to steep grade. I will try to attach this video to my email and will also send a separate email with my name in the Subject line along with the current subject.

The proposed changes are STILL internally inconsistent, simultaneously prohibiting and allowing flag lot driveways steeper than 18%.

The City's proposal would STILL apply to only 13 lots in the ENTIRE CITY, endangering the entire community for the benefit of very few—and only 6 of these are held by the same owners since December 1997.

The City's revised proposal STILL leaves the ultimate decision on each variance request in the hands of the Fire Code Official.

In the interest of the health and safety of our neighbors, our first responders, our community, and our environment, I respectfully request that the Planning Commission ONCE AGAIN reject Ordinance #3309/Planning Action PA-L-2026-0020.

[Click to Download](#)

IMG_7781.mov
53.2 MB

**For Video linked in Public Comment,
please use the link below:**

**[https://records.ashland.or.us/WebLink/
Browse.aspx?id=145519&dbid=0&repo=CITY-
RECORDS](https://records.ashland.or.us/WebLink/Browse.aspx?id=145519&dbid=0&repo=CITY-RECORDS)**

Planning Action PAL-2026-00020

From Troy Brown <troybrownjr@yahoo.com>

Date Mon 8/24/2026 3:34 PM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>; Derek Severson <derek.severson@ashland.or.us>

Cc Kent McLaughlin <kbmc22@gmail.com>

[EXTERNAL SENDER]

Planning Commissioners;

I am writing to oppose the proposed amendments to the flag drive standards in the Ashland Municipal Code ALUO 18.5.3.060.F. (Ordinance #3309, Planning Action PA-L-2026-00020).

On August 11, 2026 the Planning Commission unanimously rejected the proposed amendments and understood that community safety and risk mitigation were top concerns. Even after the vote the City staff is still asking the Planning Commission to consider a revised proposal to allow excessively steep and dangerous driveways.

The city has still not provided any clear and compelling information as to why this change is necessary.

The proposed changes are **still** inconsistent with state law.

The proposed changes are **still** inconsistent with the City of Ashland's Comprehensive Plan.

The proposed changes are **still** inconsistent with the City of Ashland's 2025 Community Wildfire Protection Plan.

The City's revised proposal **still** leaves the ultimate decision on each variance request in the hands of **one individual**, the Fire Code Official, which is a shifting of the Planning Commission's role to review all variances.

I respectfully request that the Planning Commission **once again** reject Ordinance #3309/Planning Action PA-L-2026-00020.

Troy Brown
Former Planning Commissioner
345 Hemlock Ln, Ashland OR

PA-L-2026-00020

From Margaret Young <margaretorlenayoung@yahoo.com>

Date Mon 8/24/2026 3:48 PM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

[EXTERNAL SENDER]

To the Planning Commission of Ashland, Interested Parties, and Community Members:

After lengthy, in-depth consideration, and finally voting unanimously to reject a proposal to amend the Code limiting the maximum length of flag drives, you have apparently reopened your discussion of the question.

An unlimited grade for a driveway on an extremely steep property represents potential safety problems in construction and usage. The current code supports reasonable standards for Ashland's citizenry, which is the responsibility of the Commission.

Most reasonable people would concur with that judgment. However, no one has hindsight. Most of us would find it unfair to make the code retroactive. If a property met the code current at the time of construction on their property, that owner should be grandfathered in.

However, people who buy property or construct their driveways AFTER the passage of the code have had the opportunity to apprise themselves of municipal codes current at the time. THEY may find it unfortunate, but it is NOT unfair to require them to follow the law. The elimination of an upper limit remains preposterous.

Actually, it smacks of a few "wanting their own way" for their own personal reasons, which is totally understandable on their part. Who among us does not want our own way? Your responsibility remains to take into account the greater good of the community based upon the facts and the law. Rescinding your recent, sound decision sets a questionable precedent for how the Commission makes and adheres to its decisions.

Margaret Young
345 Hemlock Lane
Ashland, Oregon 97520
Phone: (541) 301-8700
email: margaretorlenayoung @yshoo.com

Re: 231 Granite Street; Driveway Ordinance

From Michael Sullivan <michael.sullivan@ashland.or.us>

Date Tue 8/25/2026 2:12 PM

To David Oursler <paul.oursler@gmail.com>

Cc Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

Hi David,

Thank you for the clarification. To ensure proper inclusion in the public record, any materials you would like added must be submitted directly by you. Staff are not able submit materials for inclusion in the record on your behalf.

I've included your previous comment from PA-L-2026-00020 as requested. If you would like to have your public comments from PA-T2-2024-00053 added to the record, please forward those materials to PC-public-testimony@ashland.or.us. Once received, staff will ensure they are included in the planning action record and forwarded to the Planning Commission.

Please send any further comments at your earliest convenience so we can make sure materials they can be forwarded to the Planning Commission.

Thank you,

Michael Sullivan
Executive Assistant

Pronouns he, him



City of Ashland
Community Development Department
51 Winburn Way, Ashland, Oregon 97520
541.552.2072 | TTY 800.735.2900
Michael.sullivan@ashlandoregon.gov

This email transmission is official business of the City of Ashland and it is subject to Oregon Public Records Law for disclosure and retention. If you have received this message in error, please contact me at (541) 552-2072. Thank you.

From: David Oursler <paul.oursler@gmail.com>

Sent: Tuesday, August 25, 2026 8:26 AM

To: Michael Sullivan <michael.sullivan@ashland.or.us>

Cc: Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

Subject: Re: 231 Granite Street; Driveway Ordinance

[EXTERNAL SENDER]

Thanks. Please append my letter sent for the original public meeting when Mr. Deboer applied for Planning Committee approval for variances to build at 231 Granite.

Sincerely,
David P Oursler
231 Strawberry Lane
Ashland Oregon 97520

On Mon, Aug 24, 2026 at 10:35 AM Michael Sullivan <michael.sullivan@ashland.or.us> wrote:

Good morning David,

Your public comment has been received, it will be included in the planning action record and forwarded to the Planning Commission.

You mentioned that you would like your 2 previous public comments referenced, but I only see that 1 comment has been submitted into the record by you for this planning action, which was sent in on August 10th. I've attached it here. Was there another comment you wanted in the record in addition to the one attached here and the one you just submitted?

Thank you,

Michael Sullivan
Executive Assistant

Pronouns he, him



Better Together

City of Ashland
Community Development Department
51 Winburn Way, Ashland, Oregon 97520
541.552.2072 | TTY 800.735.2900
Michael.sullivan@ashlandoregon.gov

This email transmission is official business of the City of Ashland and it is subject to Oregon Public Records Law for disclosure and retention. If you have received this message in error, please contact me at (541) 552-2072. Thank you.

From: David Oursler <paul.oursler@gmail.com>

Sent: Monday, August 24, 2026 10:09 AM

To: Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

Subject: 231 Granite Street; Driveway Ordinance

[EXTERNAL SENDER]

Dear Planning Commission:

Please reference my 2 prior letters on this subject. Changing the ordinance for the Deboers is scandalous.

I would re-emphasize that the Deboers bought the property knowing full well that it was not a building lot. We all have for 20 plus years.

Sincerely,

David Paul Oursler

252 Strawberry Ln, Ashland, OR 97520

(No subject)

From David Oursler <paul.oursler@gmail.com>

Date Sun 8/9/2026 9:56 PM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>; Derek Severson <derek.severson@ashland.or.us>

[EXTERNAL SENDER]

Dear Planning Commission Members,

Regarding the proposed changes to the flag driveway standards:

The proposed amendments are inconsistent with state law, inconsistent with the City of Ashland's Comprehensive Plan, and inconsistent with the City of Ashland's 2025 Community Wildfire Protection Plan. The existing regulations are meant to protect neighbors from having to live in hazard zones (vehicles sliding down veritable ski slopes) and to allow access of emergency vehicles. The proposed changes are unreasonable.

The only reason the amendments are being considered is that a wealthy person and his hired consultants are pressuring the Planning Commission to grant him special treatment for development of his specific property. This would be at the expense of the interests of his neighbors and the community at large. While members of the Planning Commission are employed in various aspects of the development, building, and real estate professions and are beholden to maintaining good relationships with the applicant, his associates, and the various professions he has hired, it is hoped that they will decide in the community's best interests.

I respectfully request that the Planning Commission recommend that Ordinance #3309/Planning Action PA-L-2026-00020 be rejected.

Sincerely,

David P. Oursler
252 Strawberry Lane
Ashland, Oregon 97520

Planning Action PA-L-2026-00020

From Dea Collins <deanasoncollins@yahoo.com>

Date Mon 8/24/2026 9:56 PM

To Derek Severson <derek.severson@ashland.or.us>; Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

[EXTERNAL SENDER]

August 24, 2026

Planning Action PA-L-2026-00020.

Dear Planning Commission Members,

I am writing again to oppose the proposed amendments to the flag drive standards in the Ashland Municipal Code ALUO 18.5.3.060.F. (Ordinance #3309, Planning Action PA-L-2026-00020).

It is my understanding that on August 11, 2026 the Planning Commission unanimously rejected the proposed amendments and understood that community safety and risk mitigation were top concerns. Even after the vote and substantial, compelling public testimony in objection to the amendments, the City staff is still asking the Planning Commission to consider a revised proposal to allow excessively steep and dangerous driveways.

Why after unanimous rejection of the proposed flag drive amendment was the public hearing reopened to continue discussions about the proposal?

The proposed changes are **still** inconsistent with state law which limits flag drive grades to 10%.

The proposed changes are **still** inconsistent with the City of Ashland's Comprehensive Plan which limits flag drive grades to 15% with variances no greater than 18%.

The proposed changes are **still** inconsistent with the City of Ashland's 2025 Community Wildfire Protection Plan.

With no upper limit of driveway grade, or even an extreme upper limit of 25%, the proposed changes would **still** allow flag driveway grades far steeper than any other jurisdiction in Oregon. This will endanger Ashland citizens, first responders, and the environment.

The proposed changes are **still** internally inconsistent, simultaneously prohibiting and allowing flag lot driveways steeper than 18%.

The City's proposal would **still** apply to only 13 lots in the entire city, endangering the entire community for the benefit of very few--and only 6 of these are held by the same owners since

December 1997.

The City's revised proposal **still** leaves the ultimate decision on each variance request in the hands of the Fire Code Official.

In the interest of the health and safety of our neighbors, our first responders, our community, and our environment, I respectfully request that the Planning Commission **once again** reject Ordinance #3309/Planning Action PA-L-2026-00020.

Sincerely,

Dea and Robb Collins

Sent from my iPad

Planning Action PA-L-2026-00020

From James M. <jmccarthy.consulting@gmail.com>

Date Mon 8/24/2026 10:16 PM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

Cc Derek Severson <derek.severson@ashland.or.us>

[EXTERNAL SENDER]

Dear Planning Commission Members,

I am writing to oppose the proposed amendments to the flag drive standards in the Ashland Municipal Code ALUO 18.5.3.060.F. (Ordinance #3309, Planning Action PA-L-2026-00020).

On August 11, 2026 the Planning Commission unanimously rejected the proposed amendments and understood that community safety and risk mitigation were top concerns. Even after the vote and substantial, compelling public testimony in objection to the amendments, the City staff is still asking the Planning Commission to consider a revised proposal to allow excessively steep and dangerous driveways.

The proposed changes are **still** inconsistent with state law.

The proposed changes are **still** inconsistent with the City of Ashland's Comprehensive Plan.

The proposed changes are **still** inconsistent with the City of Ashland's 2025 Community Wildfire Protection Plan.

With no upper limit of driveway grade, or even an extreme upper limit of 25%, the proposed changes would **still** allow flag driveway grades far steeper than any other jurisdiction in Oregon. This will endanger Ashland citizens, first responders, and the environment.

The proposed changes are **still** internally inconsistent, simultaneously prohibiting and allowing flag lot driveways steeper than 18%.

The City's proposal would **still** apply to only 13 lots in the entire city, endangering the entire community for the benefit of very few--and only 6 of these are held by the same owners since December 1997.

The City's revised proposal **still** leaves the ultimate decision on each variance request in the hands of the Fire Code Official.

In the interest of the health and safety of our neighbors, our first responders, our community, and our environment, I respectfully request that the Planning Commission **once again** reject Ordinance #3309/Planning Action PA-L-2026-00020.

Sincerely,

Jim McCarthy
281 Greenbriar Place
Ashland



Outlook

Planning Action PA-L-2026-00020

From Douglas Smith <dougzmail7@gmail.com>

Date Mon 8/24/2026 11:08 PM

To Derek Severson <derek.severson@ashland.or.us>; Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

 1 attachment (2 MB)

PA-L-2026-00020Lettr8-24-26.pdf;

[EXTERNAL SENDER]

Please find the attached PDF letter. I tried to send this through the Ashland "Form Center" but it didn't accept it.

Please confirm its submission, thank you.

Doug and Linda Smith
Ashland
541-941-2874

Dear Planning Commission Members,

I am writing to oppose the proposed amendments to the flag drive standards in the Ashland Municipal Code ALUO 18.5.3.060.F. (Ordinance #3309, Planning Action PA-L-2026-00020).

I couch my comments apprised of the recent changes in the state and now the proposed changes at Ashland City Council to limit neighbor notification and input. We must move ahead carefully and not create a new “headache” like the 1997 “Buildable” classifications of extreme hillside properties. And we must also keep in mind that in the future, because of HR 4037, the developer/applicant will be the only party that can appeal a project leaving out citizen input!

I object to the proposed change for the following reasons:

1) Part 3: By staff figures, there are 13 properties affected by the Hillside Development Standards, and **only 6 of those properties remain with the same owner** (or family) from 1997 to now. We should not give advanced approval of greater than 15% variance for the 6 lots without Planning Commission review. It’s helpful to remember that Oregon Fire Code allows for 10% driveway codes and we are going way past that in times of increased fire danger.

2) Part 3: **There is no definition of what standards would apply to the 6 lots if they are sold; will future new owners be given these variances?** In any case, each lot should be reviewed related to its own characteristics.

2) Part 3: If a lot was purchased after the Hillside Development Standards, Ordinance No. 2808, (of Dec. 3, 1997), that purchaser was or should have been fully aware of the property’s constraints and should not be given advanced approval for variances above the present code. If extenuating circumstances occur, they should be reviewed by the Planning Commission as any other variance would be.

3) In Part 5 and the last part of Part 6: In Part 5, “Fire Code Official” needs to be further specified and a process added that includes two Planning Commission members accompany the Fire official to discuss while on-site for full understanding of the reasons for possible approval and steps for such approval.

— Putting a nay or yay to a project should not be put in the hands of one unelected official - there is too much chance of influence - not necessarily because of graft, but because a subjective tilted decision toward a known or “good” or financially supportive citizen should not be left to one unelected representative/person. The said Planning Commissioners would report back for Commission consideration.

In conclusion, I want to share why it’s important to get citizen input. I recently visited with a City Council Member who stated that the real planning problem is that “rich neighbors hire the most effective land-use lawyers because they don’t want their neighborhood affected by change.” I responded that: 1) many other people who care about these issues are busy raising kids and keeping jobs and can’t keep track of ALL the issues but they care, so thanks to some of the “rich” ones who help, object, or guide us; and 2) these involved “problem” citizens are not all self-interested; my wife and I live a half mile away from the affected hillside lots and we have owned our house for almost 50 years. We are involved because we love Ashland and are doing what we can to encourage reasonable developments; we remember the mudslides that occurred in the late 90’s where two of our friends’ homes were destroyed and we see the debacle of 329 Granite that passed w/ little citizen input. We fear that if our city representative governing bodies move to limit our involvement as discussed in Council, we (Ashland) will all pay in the future.

Thank you for the work you do as our representatives.

Doug and Linda Smith
Ashland

Planning Action PA-L-2026-00020: Comments of Rogue Advocates

From Jamin Giersbach <Jamin@rogueadvocates.org>

Date Mon 8/24/2026 11:56 PM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

Cc Derek Severson <derek.severson@ashland.or.us>

 1 attachment (7 KB)

Jamin Giersbach Comments — PA-L-2026-00020 — 2026-08-24.pdf;

[EXTERNAL SENDER]

Hello,

Please accept the attached comments of Rogue Advocates on PA-L-2026-00020 / Draft Ordinance No. 3309 for the continued hearing on August 25, 2026, and include them in the record.

Jamin Giersbach,
Executive Director
Rogue Advocates
458-763-0188

August 24, 2026

Ashland Planning Commission
City of Ashland
Via email: PC-public-testimony@ashland.or.us

Re: PA-L-2026-00020 / Ordinance No. 3309, flag driveway grades

Dear Commissioners:

Two weeks ago you voted no on this ordinance, 5 to 0. You asked staff for two things before you would look again: revised language, and the purchase and transfer dates for the 13 lots. The revised language is in your packet. The lot dates are not. And the new variance still has no upper limit on how steep a driveway can be.

In April the state land use board held Ashland to its own code: no driveway variance steeper than 18 percent, under any circumstance. The version in front of you tonight takes out that limit and puts nothing in its place. An owner with a 25 percent driveway could ask for a variance. So could one at 35. Nothing in the ordinance says how steep is too steep.

These are hillside lots in a city that burns. Ashland Fire's own July memo in your record says the fire code holds fire access roads to 10 percent, steeper only with the fire code official's sign-off. An engine that cannot climb a driveway stops at the bottom of it. The crew walks up toward the house while the people in the house are trying to drive down the same narrow drive. That is what a grade ceiling in the code is for.

The staff report does mention a 25 percent ceiling. It appears in brackets, as an option. The ordinance itself, the text the Council would actually adopt, has no ceiling at all. A limit written into the code holds on its own. Without one, every steep driveway becomes a separate argument, decided case by case.

What made you vote no on August 11 is still in the text, and the lot dates you asked for are still not in the packet. Please vote no again. If the city wants this to move forward, write a firm ceiling into the ordinance itself, add the lot dates, and have the fire code official review that final text.

Thank you for the care you took with this on August 11.

Sincerely,

Jamin Giersbach
Executive Director, Rogue Advocates
Writing in my individual capacity
251 Twin Oaks Road
Jacksonville, OR 97530
jamin@rogueadvocates.org

Preservation of issues for the record

I request that this letter be entered into the record of PA-L-2026-00020 and that the following issues be preserved for review under ORS 197.835(3); each is raised with sufficient specificity for the Commission, the Council, and staff to respond. (1) Proposed AMC 18.5.3.060.F.3 lacks an ascertainable standard: the August 25 staff report (packet p. 16) states the provision with an upper limit only as a bracketed option (“a variance may be granted for a grade in excess of 15 percent [- option - , but no greater than 25 percent]”), while the attached ordinance (packet p. 21) contains no upper limit; the suggested motion recommending approval “as amended in the August 25th staff report” does not identify which text is recommended, and the codification authority in Section 3 of the ordinance cannot resolve a substantive policy option after adoption. (2) The amendment lacks an adequate factual base (Statewide Planning Goal 2; ORS 197.610 et seq.): despite the Commission's unanimous August 11 direction that staff “provide purchase/transfer date information for the 13 identified lots,” the August 25 packet contains no lot list, tax lot numbers, addresses, or dates, only the statement that “seven of the 13 lots identified as potential candidates for driveway grade variances have changed hands since the ordinance change in 1997”; the recitals count 14 lots in the August 11 ordinance and 13 in the August 25 ordinance without explanation; and the affected lots are identified in the record only on a citywide-scale map. (3) No findings address consistency with the Ashland Comprehensive Plan, including Environmental Resources Policy 49 (routes “wide enough to accommodate incoming fire apparatus and evacuating residents simultaneously”); AMC 18.5.9.020.B is recited but applied to nothing. (4) The Fire Code Official's July 20, 2026 memorandum reviewed superseded draft language (“the proposed language in Section 5”); the text has since been rewritten and no supplemental memorandum on the current text appears in the record; consultation should attach to the text actually adopted (see ORS 368.039(3); 2025 Oregon Fire Code, including the D108.1 Uniform Alternate Construction Standard and fire apparatus access grade provisions). (5) The record does not identify the 35-day post-acknowledgment notice to the Department of Land Conservation and Development (ORS 197.610; OAR 660-018-0020; AMC 18.5.1.070), nor any notice under ORS 227.186 if applicable; this issue resolves if the notice is identified. (6) Drafting defects in proposed F.3 and F.6: the no-conforming-alignment demonstration is stated as illustration (“include, but are not limited to”) rather than requirement; “minimum necessary” is permissive (“may consider”) and keyed to the undefined phrase “reasonably develop the lot”; “buildable area of the lot” is undefined; the ordinance does not state the event by which a lot is “created” for eligibility under F.2/F.3; there is no applicability provision for pending or remanded applications; the turnaround requirements of AMC 18.5.3.060.J are unaddressed for these lots; and Physical and Environmental Constraints review is keyed to natural slopes over 25 percent rather than to lot-creation date. (7) The process and appeal rights that will govern future variances under this provision are unresolved, including the interaction of chapter 18.5.5 discretionary review with the “clear and objective” recital and with Ordinance No. 3307 as acted on by the Council. I request that the record remain open through and after the City Council's September 15, 2026 hearing, that I receive written notice of the Commission's recommendation and the Council's decision, and that the right to supplement this testimony be reserved. All issues raised here and by other participants are preserved for appeal.

Planning Action PA-L-2026-00020

From Bob Hilton <jobob290@gmail.com>

Date Tue 8/25/2026 7:22 AM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>; Derek Severson <derek.severson@ashland.or.us>

[EXTERNAL SENDER]

Dear Planning Commission Members,

I am writing to oppose the proposed amendments to the flag drive standards in the Ashland Municipal Code ALUO 18.5.3.060.F. (Ordinance #3309, Planning Action PA-L-2026-00020).

On August 11, 2026 the Planning Commission unanimously rejected the proposed amendments and understood that community safety and risk mitigation were top concerns. Even after the vote and substantial, compelling public testimony in objection to the amendments, the City staff is still asking the Planning Commission to consider a revised proposal to allow excessively steep and dangerous driveways.

The proposed changes are **still** inconsistent with state law.

The proposed changes are **still** inconsistent with the City of Ashland's Comprehensive Plan.

The proposed changes are **still** inconsistent with the City of Ashland's 2025 Community Wildfire Protection Plan.

With no upper limit of driveway grade, or even an extreme upper limit of 25%, the proposed changes would **still** allow flag driveway grades far steeper than any other jurisdiction in Oregon. This will endanger Ashland citizens, first responders, and the environment.

The proposed changes are **still** internally inconsistent, simultaneously prohibiting and allowing flag lot driveways steeper than 18%.

The City's proposal would **still** apply to only 13 lots in the entire city, endangering the entire community for the benefit of very few--and only 6 of the 13 lots remain held by the same owners since December 1997. Importantly, the owners of the lot in question knew of the current requirement at the time they purchased the lot, and now seek to use their influence to change the requirement. This situation is quite similar to that of a purchaser of land who seeks to eliminate a private nuisance that existed at the time he bought the property. In the vast majority of such cases, the law rules against the purchaser, finding that the pre-existing nuisance takes priority.

The City's revised proposal **still** leaves the ultimate decision on each variance request in the hands of **one individual**, the Fire Code Official.

In the interest of the health and safety of our neighbors, our first responders, our community, and our environment, I respectfully request that the Planning Commission **once again** reject

Ordinance #3309/Planning Action PA-L-2026-00020.

Sincerely,

First and Last Name

Address

Subject Line: Planning Action PA-L-2026-00020

From Mary Hough <hough.mm@gmail.com>

Date Tue 8/25/2026 8:12 AM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>; Derek Severson <derek.severson@ashland.or.us>

[EXTERNAL SENDER]

Dear Planning Commission Members,

We are writing to oppose the proposed amendments to the flag drive standards in the Ashland Municipal Code ALUO 18.5.3.060.F. (Ordinance #3309, Planning Action PA-L-2026-00020).

On August 11, 2026 the Planning Commission unanimously rejected the proposed amendments and understood that community safety and risk mitigation were top concerns. Even after the vote and substantial, compelling public testimony in objection to the amendments, the City staff is still asking the Planning Commission to consider a revised proposal to allow excessively steep and dangerous driveways.

The proposed changes are **still** inconsistent with state law.

The proposed changes are **still** inconsistent with the City of Ashland's Comprehensive Plan.

The proposed changes are **still** inconsistent with the City of Ashland's 2025 Community Wildfire Protection Plan.

With no upper limit of driveway grade, or even an extreme upper limit of 25%, the proposed changes would **still** allow flag driveway grades far steeper than any other jurisdiction in Oregon. This will endanger Ashland citizens, first responders, and the environment.

The proposed changes are **still** internally inconsistent, simultaneously prohibiting and allowing flag lot driveways steeper than 18%.

The City's proposal would **still** apply to only 13 lots in the entire city, endangering the entire community for the benefit of very few--and only 6 of these are held by the same owners since December 1997.

The City's revised proposal **still** leaves the ultimate decision on each variance request in the hands of the Fire Code Official.

In the interest of the health and safety of our neighbors, our first responders, our community, and our environment, we respectfully request that the Planning Commission **once again** reject Ordinance #3309/Planning Action PA-L-2026-00020. At the time we purchased our lot, we were made aware of the requirements of the hillside ordinance. We designed our home to comply with the ordinance. My hope is that you ask the same of other members of our community who choose to build a home on a hillside lot.

Sincerely,

Matthew and Mary Hough
333 Alta St
Ashland OR 97520

Planning Action PA-L-2026-00020

From jay.reeck@97520.net <jay.reeck@97520.net>

Date Tue 8/25/2026 9:18 AM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>; Derek Severson <derek.severson@ashland.or.us>; Michael Sullivan <michael.sullivan@ashland.or.us>

Cc Sarah Sameh <sesameh@mind.net>

 5 attachments (2 MB)

Sales History of 231 Granite Street.pdf; AMC 18 Code Amendments to Support Housing Development (4).pdf; Staff Response to Chapter 18 Land Use Code Amendments Request (5).pdf; Letter to Planning Commission_08.25.2026 Meeting.pdf; 2026-08-25_Planning Packet.pdf;

[EXTERNAL SENDER]

Good morning,

Please find our comments attached as a PDF file. Additionally, please find four attachments referenced in the letter. These attachments, in addition to our written comments, are for incorporation into the public record.

Please let us know if you have any trouble opening the attachments.

Thank you very much,

Jay Reeck and Sarah Sameh
230 Strawberry Lane

August 25, 2026

RE: PA-L-2026-00020; Ordinance #3309

Dear Planning Commission,

We genuinely appreciate the action you took at your meeting on August 11, 2025 to reject the proposal to change flag drive standards. Given that the revised proposal still poses inherent danger and is still widely out of sync with current laws and regulations all across Oregon, we remain strongly opposed to the proposed language in the Ashland Municipal Code ALUO 18.5.3.060.F. (Ordinance #3309, Planning Action PA-L-2026-00020) related to flag drive standards. Furthermore, the revised proposal does not actually answer the questions and concerns posed by the Planning Commission on August 11.

At the August 11 Planning Commission meeting, the Commission asked staff to research those lots that were potentially impacted by the Hillside Development Standards enacted in 1997, with a focus on those properties that remain with the same owners or family since that time. We believe this is a very reasonable request by the Commission. In the research done by staff, there are **only 13 lots in question. Only 6 of these are held by the same owners/families since December 1997.** We can understand how it might be acceptable to grant an exemption to the six owners who purchased properties prior to 1997, but not for anyone else. (Commissioner Lininger articulated this well in the last meeting [Ashland Planning Commission - August 11, 2026](#) 01:23:50 - 01:26:15.) The City's new proposal doesn't address this concern or suggestion.

Much of what we shared in our first letter remains the same: the proposed changes are inconsistent with state law, are inconsistent with the City of Ashland's Comprehensive Plan, and are inconsistent with the City of Ashland's 2025 Community Wildfire Protection Plan. (Commissioner Maher articulated this well in the last meeting [Ashland Planning Commission - August 11, 2026](#) 01:20:00- 01:23:50.) In addition, the City staff did not propose an upper limit of driveway grade for these 13 lots, yet they offered the Commission "optional" language to limit the steepness to a maximum of 25%. (Commissioner KenCairn and Chair Verner articulated the need for a maximum grade in the last meeting [Planning Commission - August 11, 2026](#) 01:16:00 - 01:17:07.) This number is no surprise, as the slated driveway grade on 231 Granite Street is 24%. (Commissioner Maher expressed concern for any driveways as steep as 24% in the last meeting [Ashland Planning Commission - August 11, 2026](#) 01:20:30- 01:23:50.) The City continues to expend energy and resources to appease elite, wealthy landowners, while ignoring the safety of citizens, first responders, and our community at large. With no upper limit on driveway grade, or even an extreme upper limit of 25%, the proposed revised changes would still allow flag driveway grades far steeper than any other jurisdiction in Oregon. The current driveway grade standards in Oregon have limits for good reason: for the safety of first responders, neighbors and the community at large.

When the City of Ashland passed the Hillside Development Standards in 1997, there were 33 lots that were impacted by the decision. Even then, for the greater good of the community, the ordinance was passed. If the City is concerned about a takings issue or wants to "do right" by those owners who did not have restrictions when they purchased their land (the 6 properties in question), why doesn't the City simply remunerate those 6 owners? This is a solid long-term solution that emphasizes safety, equity, and community collaboration—values that have been long held by the City of Ashland and its citizenry. In light of the budgetary challenge this may pose, we understand that one community member has offered to facilitate the purchase of lots

and donate the land to the City as open space. We, too, are willing to consider pitching in for the greater good of the community. If remuneration is not a viable option, it seems reasonable to us that only those properties remaining with the same owners (prior to the Hillside Development Standards to now) could be eligible for exceptions. The City is putting too much energy into a matter that literally impacts a miniscule subsection of our community, and namely, one very wealthy landowner who purchased a property with known restrictions.

The proposed revised changes are cumbersome, rife with loopholes, and still internally inconsistent, simultaneously prohibiting and allowing flag lot driveways steeper than 18%. Additionally, the City's revised proposal still leaves the ultimate decision on each variance request in the hands of one person: the Fire Code Official. Any variance request whose ultimate decision rests on the shoulders of one individual, regardless of that person's keen knowledge or expertise, opens a city and that individual to significant and undue pressure. Again, Commissioner KenCairn and Chair Verner articulated the need to avoid letting a variance decision rest on solely the Fire Code Official ([Planning Commission - August 11, 2026 01:16:00 - 01:17:07](#)). Just reading through the proposed changes to the Ashland Municipal Codes shines a light on how cumbersome the new language is; the current code is three sentences. The proposed code has six subsections that require focused attention to even attempt to interpret it. This alone helps underscore the lengths the City is going to for one property in question. This politically-biased favoritism, rather than a thoughtfully weighed decision, is unjust and dangerous for our community.

We honestly feel bad for the City Community Development staff, who are being directed to spend their time and energy drafting language, attending meetings, writing comments, responding to appeals, etc. for this one narrow issue arising from one lot. As written and oral testimony to the Planning Commission, and even staff meeting materials point out, these proposals have arisen because of one property and one property owner, whose City of Ashland Planning Action approval was remanded by LUBA. The Community Development staff efforts on this issue are distracting them from their other important work and, frankly, may be demoralizing by directing them to craft language that is not in keeping with our own state laws, city comprehensive plan, city wildfire protection plan, and—chiefly—the greater good for our community.

The direction to the Community Development staff has now been made official with the City Council's adoption of the proposal from Councilors Sherrell and Dahle last week, "AMC 18 Code Amendments to Support Housing Development" (August 18, 2026 Ashland City Council meeting). On page 3, the document aims to allow driveways to exceed 18% grade on flag lots, citing the LUBA decision on 231 Granite street. The claim that an elite, sophisticated, wealthy landowner (with the aid of architects, land use consultants, and geotechnical engineers) who purchased a lot with existing code restrictions faces a "real hardship" is disingenuous, and it illustrates political motivations. On page 1 of the same document, the Councilors direct the staff to send items, including the flag driveway code, back through the Planning Commission and City Council for adoption.

Furthermore, by adopting the document, the City Council ignored the words of caution from the City staff, Mayor Graham, the Deputy City Manager, and Councilor Hansen. They all explained that directing the Community Development staff to prioritize their "Support Housing Development" changes to Chapter 18 AMC Code will adversely impact and delay other important, time-sensitive, and compliance-related priorities already on the plate of the staff (Staff

Response to Chapter 18 Land Use Code Amendments Request; Video of Ashland City Council Meeting August 18, 2026 [Ashland City Council - August 18, 2026](#) [3:23:39 - 04:19:01]).

The Council's adoption of this proposal, including language for relief of grade limits on flag lot driveways, now officially directs the Community Development office staff to spend an inordinate amount of time, energy, and City resources to appease one landowner. All of these legislative and legal contortions cater to one lot while endangering neighbors, first responders, and our community at large. It's embarrassing and dangerous for Ashland.

The current Ashland Municipal Code (ALUO 18.5.3.060.F.) states:

"Flag drive grades shall not exceed a maximum grade of 15 percent. Variances may be granted for flag drives for grades in excess of 15 percent but no greater than 18 percent; provided, that the cumulative length of such variances across multiple sections of the flag drive does not exceed 200 feet. Such variances shall be required to meet all of the criteria for approval in chapter 18.5.5, Variances."

The proposed change to the Ashland Municipal Code is long, cumbersome, and filled with loopholes. The proposed code (ALUO 18.5.3.060.F.) states:

"Flag drive grades.

1. General standard. Flag drive grades shall not exceed a maximum grade of 15 percent.
2. Exception for lots created after the Hillside Development Standards. For a flag drive serving a lot created on or after the effective date of the Hillside Development Standards, Ordinance No. 2808, adopted December 3, 1997, including a lot created through a flag lot partition, a variance may be granted for a grade in excess of 15 percent but no greater than 18 percent.
3. Exception for lots of record predating the Hillside Development Standards. For a flag drive serving a legal lot of record created before the effective date of the Hillside Development Standards, Ordinance No. 2808, adopted December 3, 1997, a variance may be granted for a grade in excess of 15 percent.
4. Cumulative length limitation. The cumulative length of all sections of a flag drive exceeding 15 percent grade approved through a variance under subsection F.2 or F.3 shall not exceed 200 feet.
5. Fire Code compliance. A flag drive approved under a variance granted under subsection F.2 or F.3 remains subject to the fire apparatus access requirements of the Oregon Fire Code, including any approval required by the Fire Code Official.
6. Variance criteria. A variance under subsection F.2 or F.3 shall meet the criteria for approval in chapter 18.5.5, Variances. Circumstances supporting a variance under this subsection include, but are not limited to, a demonstration based on stamped engineer's drawings that no alignment meeting the general 15 percent grade standard of this subsection can provide vehicular access to a buildable area of the lot, or that a steeper alignment would better avoid or reduce impacts to natural or physical features of the site, such as water resource protection zones, trees, rock outcroppings, or areas best left in an undisturbed natural state. In evaluating a variance under this subsection, the approval authority may consider unique or unusual site conditions, including topographic constraints, access limitations, and the avoidance or reduction of impacts to natural and physical features, in determining whether the requested grade is the minimum necessary to reasonably develop the lot while minimizing site disturbance. The Fire Code Official shall make a recommendation on each variance application regarding fire apparatus access and fire [sic] and life safety, and the recommendation shall be considered by the approval authority."

Is housing the issue? If so, let's be genuine and honest with ourselves and with each other. Changing a code to allow one particular landowner to develop a hillside property to build a

single-family luxury home does not help solve our housing crisis. If increasing the housing supply in Ashland is the issue at hand, let's spend a study session brainstorming viable options and rally the community around this shared goal.

The facts remain the same: Oregon Fire Code allows for 10% driveway grades. The City of Ashland allows flag lot driveways up to 15% and already has a variance process in place to allow up to 18%. Grades steeper than 18% are unsafe and unwise.

As we said previously, this is a moment in time when the Commission can do the right thing: make a well informed, thoughtfully weighed, law abiding, for-the-greater-good decision that supports the wellbeing of our community. In the interest of the health and safety of our neighbors, our first responders, our community, and our environment, we respectfully request that the Planning Commission once again reject Ordinance #3309/Planning Action PA-L-2026-00020.

We appreciate your time on this matter.

Sincerely,

Jay Reeck and Sarah Sameh
230 Strawberry Lane

Attachments and links to be incorporated, in addition to this letter, into the public record:

- 2026-08-25_Planning Packet
- Sales History of 231 Granite Street
- Video of Planning Commission Meeting August 11, 2026 [Ashland Planning Commission - August 11, 2026](https://videoplayer.telvue.com/player/w9sPsSE7vna3XTN_39bs1rEXjVWF0kfP/playlists/5224/media/1040134) [00:02:53 - 01:33:00]
https://videoplayer.telvue.com/player/w9sPsSE7vna3XTN_39bs1rEXjVWF0kfP/playlists/5224/media/1040134
- AMC 18 Code Amendments to Support Housing Development
- Staff Response to Chapter 18 Land Use Code Amendments Request
- Video of Ashland City Council Meeting August 18, 2026 [Ashland City Council - August 18, 2026](https://videoplayer.telvue.com/player/w9sPsSE7vna3XTN_39bs1rEXjVWF0kfP/playlists/5224/media/1041316) [3:23:39 - 04:19:01]
https://videoplayer.telvue.com/player/w9sPsSE7vna3XTN_39bs1rEXjVWF0kfP/playlists/5224/media/1041316



Planning Commission Meeting Agenda

ASHLAND PLANNING COMMISSION

SPECIAL MEETING AGENDA

Tuesday, August 25, 2026

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note the public testimony may be limited by the Chair.

I. CALL TO ORDER

7:00 p.m., Civic Center Council Chambers, 1175 E. Main Street

II. ANNOUNCEMENTS

1. Staff Announcements
2. Advisory Committee Liaison Reports

III. CONSENT AGENDA

- Approval of Minutes
1. August 11, 2026 Regular Meeting Minutes

IV. PUBLIC FORUM

Note: To speak to an agenda item in person you must fill out a speaker request form at the meeting and will then be recognized by the Chair to provide your public testimony. Written testimony can be submitted in advance or in person at the meeting. If you wish to discuss an agenda item electronically, please contact PC-public-testimony@ashland.or.us by 10:00 a.m. on August 25, 2026 to register to participate via Zoom. If you are interested in watching the meeting via Zoom, please utilize the following link: <https://zoom.us/j/91234454016>

V. LEGISLATIVE PUBLIC HEARING - CONTINUED

PLANNING ACTION: PA-L-2026-00020

APPLICANT: City of Ashland

ORDINANCE REFERENCES: AMC 18.5.3.060: Additional Preliminary Flag Lot Partition Plat Criteria

REQUEST: The proposal before the Planning Commission is a draft ordinance amending AMC 18.5.3.060 to establish a variance process for flag drive and driveway grades serving legal lots of record created before the City adopted its Hillside Development Standards in 1997, and a request to forward a recommendation to the City Council. The amendment was originally included in the Senate Bill 974 implementation package (draft Ordinance No. 3307) and has been separated into a standalone ordinance, draft Ordinance No. 3309, so that it can be considered on its own merits.

VI. OPEN DISCUSSION

VII. ADJOURNMENT

Next Meeting Date: September 8, 2026

If you need special assistance to participate in this meeting, please contact Derek Severson at planning@ashlandoregon.gov or 541.488.5305 (TTY phone number 1.800.735.2900). Notification at least three business days before the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting in compliance with the Americans with Disabilities Act.





Planning Commission Minutes

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note the public testimony may be limited by the Chair.

August 11, 2026
REGULAR MEETING
DRAFT Minutes

I. **CALL TO ORDER:**

Chair Verner called the meeting to order at 7:00 p.m. at the Civic Center Council Chambers, 1175 E. Main Street. Commissioner Maher attended the meeting via Zoom.

Commissioners Present:

Lisa Verner
 Jay Lininger
 Kerry KenCairn
 Russell Phillips
 John Maher

Staff Present:

Brandon Goldman, Community Development Director
 Carmel Zahran, Deputy City Attorney
 Derek Severson, Planning Supervisor
 Mark Shay, Deputy Fire & Life Safety Chief
 Michael Sullivan, Executive Assistant

Absent Members:

Eric Herron
 Susan MacCracken Jain

Council Liaison:

Jeff Dahle

II. **ANNOUNCEMENTS**

1. **Staff Announcements** – None
2. **Advisory Committee Liaison Reports** – None

III. **CONSENT AGENDA**

Approval of Minutes

1. July 14, 2026 Regular Meeting

Commissioners Lininger/Phillips m/s to approve the consent agenda as presented. Voice Vote:
Commissioners KenCairn, Maher, Lininger, Phillips, and Verner: AYE. Motion Passed 5-0.

IV. **PUBLIC FORUM**

Chair Verner pointed to a letter submitted by Joseph Kauth on August 6, which requested that a comprehensive study on urban growth, climate change, and the urban heat island effect be initiated by the City (see attachment #1). The Commission directed staff to invite Mr. Kauth to present his concerns in person at the August 25th meeting.



Planning Commission Minutes

V. **LEGISLATIVE PUBLIC HEARINGS**

1. **PLANNING ACTION:** PA-L-2026-00020

APPLICANT: City of Ashland

ORDINANCE REFERENCES: AMC 18.5.3.060: Additional Preliminary Flag Lot Partition Plat Criteria

REQUEST: The proposal before the Planning Commission is a draft ordinance amending AMC 18.5.3.060 to establish a variance process for flag drive and driveway grades serving legal lots of record created before the City adopted its Hillside Development Standards in 1997, and a request to forward a recommendation to the City Council. The amendment was originally included in the Senate Bill 974 implementation package (draft Ordinance No. 3307) and has been separated into a standalone ordinance, draft Ordinance No. 3309, so that it can be considered on its own merits.

Chair Verner noted that a number of public comments had been submitted into the record after the packet had been posted (see attachment #2).

Staff Presentation

Planning staff presented the amendment to AMC 18.5.3.060 to allow variance for driveway grades over 18% for flag lots established before the 1997 Hillside Development Standards (Ordinance No. 2808). Mr. Severson explained that current rules allow up to 15% with an 18% variance, and LUBA's 2026 reversal of a City decision to exceed 18% led to this action. The amendment wouldn't sanction specific projects or new lots with steeper driveways; applicants for pre-1997 lots must apply individually, proving topographic restrictions and meeting AMC 18.5.5 criteria. GIS identified 13 lots likely constrained by grade issues (see attachment #3). The Oregon Fire Code's access requirements remain unchanged. Deputy Fire Chief Mark Shay affirmed fire code reviews address grade, surface, clearance, length, and parking. He mentioned that steep grades might require residential sprinklers, better fuel management, or alternate access designs. Staff confirmed sending the required 35-day DLCD notice.

Questions of Staff

The Commission raised concerns about the clarity of the ordinance language, noting that members of the public appeared confused about whether the amendment would apply beyond the targeted pre-1997 lots, and suggested restructuring the language to more explicitly limit its scope. The Commission inquired whether the minimum deviation standard was explicitly embedded in this section; staff confirmed it is covered by the general variance criteria chapter.

Chair Verner requested that any driveway approval require review by a licensed geotechnical engineer. Staff confirmed that existing physical and environmental constraints permit requirements already mandate such review for development on slopes exceeding 25 percent natural grade, making a separate requirement within this section redundant.



Planning Commission Minutes

Commissioners asked Deputy Chief Shea about the practical maximum grade a fire apparatus could navigate, the factors that would cause him to deny a proposed driveway, and what mitigation measures would support steeper grades. Deputy Chief Shay explained that the fire code sets a 10 percent grade guideline but that Ashland's topography routinely exceeds this, and that different apparatus are deployed based on conditions. He stated that if fire code requirements could not be met through any available mitigation, he would recommend denial. He further confirmed that a single home or flag lot serving two to three homes does not require a second access point under the Oregon Fire Code.

Commissioner Lininger raised the question of what happens if a pre-1997 lot is found to be undevelopable because no viable driveway alignment can satisfy both planning and fire requirements. Deputy City Attorney Carmel Zahran noted that such a situation could give rise to a takings claim, which would be analyzed on a fact-specific, case-by-case basis.

Commissioner Lininger asked whether the purchase date of a current lot owner relative to the 1997 standards adoption would be relevant to a potential takings analysis. Ms. Zahran acknowledged it could be a relevant factor, though not necessarily dispositive, and that the question warranted further research.

Commissioner Maher asked whether these variance decisions would come before the Planning Commission or be decided administratively by staff. Staff noted that with changes in state law, residential variances were trending toward administrative approval, with appeals available only to the applicant under House Bill 4037.

Public Comments

The following speakers spoke in opposition to the ordinance:

- Jay Reeck, representing himself and Sarah Sameh via Zoom
- Emil Sadofsky, representing Hutchinson Cox via Zoom
- Carey Mastain
- Steve Rouse, representing Rogue Advocates
- David Oursler had requested to speak via Zoom prior to the meeting but was unavailable

Chair Verner closed the Public Hearing and Public Record at 8:08pm.

Deliberations and Decision

The Commission discussed the public's concerns about public safety, consistency with the comprehensive plan, and the disproportionate benefit to a small number of lots. Commissioner Lininger noted that he would prefer staff to return with clearer and more objective language and potentially to limit the variance's availability to lots whose current owners obtained possession before the 1997 standards were adopted.



Planning Commission Minutes

Commissioners Maher/Lininger m/s to reject the proposed code amendment to AMC 18.5.3.060 (draft Ordinance No. 3309). Roll Call Vote: Commissioners KenCairn, Maher, Lininger, Phillips, and Verner: AYE. Motion Passed 5-0.

Following the vote, the Commission discussed options for next steps. After consultation with staff and Ms. Zahran, it was clarified that any new language prepared for the Commission's consideration would need to be made available for public comment, requiring the public hearing and record to be reopened rather than merely continuing deliberations on a closed record.

Commissioners Lininger/Maher m/s to reopen the Public Record and to continue the Public Hearing to the August 25, 2026 meeting, with staff directed to provide purchase/transfer date information for the 13 identified lots and to develop revised ordinance language for Commission consideration. Roll Call Vote: Commissioners KenCairn, Maher, Lininger, Phillips, and Verner: AYE. Motion Passed 5-0.

The Public Record was reopened at 8:32pm and the Public Hearing was continued to the August 25th Planning Commission meeting.

2. **PLANNING ACTION:** PA-L-2026-00019

APPLICANT: City of Ashland

ORDINANCE

AMC 18.2.2.030: Uses Allowed by Zone

REFERENCES:

AMC 18.2.5.090: Standards for Single-Family Dwellings and Duplexes

AMC 18.2.5.100: Single Room Occupancy (SRO)

**AMC 18.3.4.040: Normal Neighborhood District
Uses Allowed by Zone**

**AMC 18.3.5.050: North Mountain Neighborhood
Uses Allowed by Zone**

**AMC 18.3.5.100: Site Development and Design Standards
(North Mountain Neighborhood)**

**AMC 18.3.9.040: Review Procedures and Criteria
(Performance Standards Option)**

**AMC 18.5.1.010: Summary of Approvals by Type of Review
Procedure**

AMC 18.5.5.030: Review Procedure (Variances)

AMC 18.6.1.030: Definitions

REQUEST: The proposal before the Planning Commission includes draft ordinance amendments to the Ashland Land Use Ordinance to implement Senate Bill 974 (2025) and a request to forward





Planning Commission Minutes

a recommendation to the City Council. The draft ordinance amends AMC 18.2.5.090, AMC 18.3.5.100, AMC 18.3.9.040, Table 18.5.1.010, AMC 18.5.5.030, and AMC 18.6.1.030. Code changes to comply with SB 974 are required to be in effect by July 1, 2026. Additional amendments implementing House Bill 2138 (2025) requirements with regard to Single Room Occupancies (SROs) are proposed for AMC 18.2.2.030, 18.2.5.100, 18.3.4.040, 18.3.5.050 and 18.6.1.030.D. These SRO requirements must be implemented by January 1, 2027; additional code changes with regard to other sections of HB 2138 will be brought forward as a separate package following further state rulemaking. Additional amendments implementing House Bill 4037 (2026) are proposed for AMC 18.5.1.050 to establish a uniform review procedure for applications for housing subject only to clear and objective standards, consistent with amendments to ORS 197A.400 operative July 1, 2026. SB 974, HB 2138, and HB 4037 together revise the state framework for the review of residential development applications.

Chair Verner noted that a public comment had been submitted by Steve Rouse on behalf of Rogue Advocates after the packet had been posted (see attachment #4).

Staff Presentation

Planning Supervisor Derek Severson provided a brief presentation on draft Ordinance No. 3307, a package of code amendments implementing three pieces of recent Oregon state legislation: Senate Bill 974, House Bill 2138, and House Bill 4037. The Commission had previously reviewed this material at study sessions in April and May 2026, and the City Council was briefed on June 1, 2026. The amendments are collectively intended to streamline residential development review, expand housing opportunities, and align local procedures with state law.

Senate Bill 974 requires that qualifying housing applications subject to clear and objective standards be processed as Type 1 administrative decisions without a quasi-judicial public hearing. It reduces the notice radius from 200 feet to 100 feet for such applications, retains a 14-day written comment period, and allows planning commission hearings only on appeal of non-clear-and-objective applications. The draft ordinance also raises the outline/final plan concurrent submission threshold for Performance Standards Option (PSO) subdivisions to 20 lots and classifies qualifying variances as Type 1 actions. Design standards may not be applied to developments of 20 or more units for single- and two-family dwellings, with a sunset date of January 1, 2033 embedded in the ordinance.

House Bill 2138 establishes Single Room Occupancy (SRO) standards, allowing up to 6 SRO units on lots permitting detached single-family housing and permitting up to three times the maximum density in multifamily zones for SRO developments. Staff also presented a clarifying amendment to AMC 18.2.5.100(B)(5)(a) to remove an ambiguous phrase indicating that sanitary and food preparation facilities "may be provided within the unit or as shared facilities," which could be read to allow a unit to have both a private kitchen and private bathroom—making it a standard dwelling unit



Planning Commission Minutes

rather than an SRO. The corrected language would end that sentence after "facilities" and rely on subsections B and D to clarify that an SRO unit may have one or the other, but not both.

House Bill 4037 restricts the review of clear-and-objective housing applications to Type 1 administrative decisions, limits notice to 100 feet, and limits appeal rights exclusively to the applicant—eliminating neighbor and third-party appeals at both the local level and before LUBA. Staff noted that zone changes and annexations were not amended, as a conflict between SB 974's administrative processing requirements and existing Oregon law requiring ordinance adoption via public hearing remains unresolved.

Questions of Staff

Commissioner Lininger questioned the legal basis for delegating initial decision-making power for housing applications solely to administrative staff. He cited ORS 197A.400(4)(c), ORS 197.195, and ORS 227.175(10) as possibly allowing local governments to reserve this authority for the Planning Commission through a Type 1 non-hearing process. He suggested amending the ordinance to let the Planning Commission decide on housing applications without public hearings. Staff warned this would shift the current practice, where most Type 1 decisions are staff-handled, adding a new layer to the code. Staff noted the same standards apply regardless of whether staff or the Commission decides, raising public expectations for hearings that aren't possible. The Deputy City Attorney agreed on the legal challenge, stating other Oregon cities were also figuring out compliance and needed more clarity.

Commissioners Phillips/Lininger m/s to extend the meeting by 30 minutes to 10:00pm. Voice Vote: Commissioners Phillips, Maher, Lininger, and Verner: AYE. Commissioner KenCairn: NAY. Motion passed 4-1.

Commissioner Maher asked what the repercussions could be for the City if it failed to approve the state-mandated legislation. Mr. Goldman responded that if the City applied law that was inconsistent with state law, then an applicant could appeal that decision to the Land use Board of Appeals (LUBA) or potentially to the state circuit court. He added that the City must present its adopted ordinance to the Department of Land Conservation and Development (DLCD), and that if the adopted ordinance was found to be inconsistent with state law then the DLCD would direct the City to amend the ordinance to be in alignment.

Deliberations and Decision

Commissioner Maher expressed support staff's recommendation, emphasizing the legislation's goal to speed up housing approvals administratively.



Planning Commission Minutes

Commissioner Phillips suggested keeping the 200-foot notice where possible and revising the PSO threshold to 12 lots, rather than the 20 lots stated, consistent with prior discussions. Staff agreed these adjustments could be included.

Commissioner Maher moved to approve the staff-recommended motion with two modifications: retaining the 200-foot notice radius for applications where state law still permits it, and reducing the PSO concurrent submission threshold from 20 to 12 lots.

DISCUSSION: Commissioners Lininger/Phillips m/s to amend the motion to modify AMC 18.5.1.050(C)(1) to allow the Planning Commission to make initial decisions on clear-and-objective housing applications under a Type 1 non-hearing procedure, relying on the limited land use decision procedures of ORS 197.195 and ORS 227.175(10). Roll Call Vote: Commissioners Lininger and Verner: AYE. Commissioners KenCairn, Phillips, and Maher: NAY. Amendment Failed 2-3. Roll Call Vote on original motion: Commissioners Phillips, Maher, KenCairn, Lininger, and Verner: All AYES. Motion passed 5-0.

VI. OPEN DISCUSSION

The Commission reiterated its desire to have Mr. Rauth attend the August 25th meeting to discuss his public testimony in person.

VII. ADJOURNMENT

Meeting adjourned at 9:53 p.m.

*Submitted by,
Michael Sullivan, Executive Assistant*

ATTENTION

**For attachments to August 11, 2026
Meeting Minutes, please use the link
below:**

<https://ashlandor.portal.civicclerk.com/event/1176/files/agenda/3567>

LEGISLATIVE PUBLIC HEARING - CONTINUED

PA-L-2026-00020 Additional Preliminary Flag Lot Partition Plat Criteria

ASHLAND PLANNING DIVISION

STAFF REPORT

August 25, 2026

PLANNING ACTION: PA-L-2026-00020

APPLICANT: City of Ashland

ORDINANCE REFERENCES: AMC 18.5.3.060: Additional Preliminary Flag Lot Partition Plat Criteria

REQUEST: The proposal before the Planning Commission is a draft ordinance amending AMC 18.5.3.060 to establish a variance process for flag drive and driveway grades serving legal lots of record created before the City adopted its Hillside Development Standards in 1997, and a request to forward a recommendation to the City Council.

BACKGROUND

At the August 11, 2026 Planning Commission hearing on this matter, the Commission rejected the initial language brought forth by staff and left the hearing and the record open. The hearing was continued until 7:00 p.m. on Tuesday, August 25, 2026 to allow further consideration of the issues. The materials presented here are intended to supplement the August 11th packet materials.

Key points in the August 11th discussion included:

- Commissioners indicated that the ordinance language needed to better distinguish between pre-Hillside Ordinance and post-Hillside Ordinance lots for clarity and readability.
- Commissioners discussed whether to include an upper limit on driveway grade variances for pre-Hillside Ordinance lots that cannot otherwise meet the standard.
- Commissioners discussed clarifying the variance consideration in the standard, versus relying on the variance criteria in AMC 18.5.5.
- Whether relief from the driveway grade standards should be dependent on when the property was purchased (and what the driveway grade standard was at the time of purchase).

ORDINANCE AMENDMENT

A. Summary of the Proposed Amendments

Based on discussion at the August 11, 2026 hearing, staff have reworked the Flag Drive Grades section (AMC 18.6.3.060) below with an eye to:

- Clarity in addressing specific exceptions for pre-/post-1997 lots as detailed below in F.2 and F.3

- Providing a clear statement in F.5 and F.6 that a variance application would need to include a recommendation from the Fire Code Official so that it would be available in the record as part of the variance review process.
- Finally, clarifying the variance criteria with some redundancy from the Variance Chapter (i.e. “unique or unusual”) although the AMC 18.5.5 criteria will still apply. These changes in F.6 aim to clarify that protecting natural areas could be a rationale for a steeper drive through a variance, rather than a drive that met grade but involved greater disturbance of natural areas.

The proposed new language is as follows:

F. Flag drive grades.

1. **General standard.** Flag drive grades shall not exceed a maximum grade of 15 percent.
2. **Exception for lots created after the Hillside Development Standards.** For a flag drive serving a lot created on or after the effective date of the Hillside Development Standards, Ordinance No. 2808, adopted December 3, 1997, including a lot created through a flag lot partition, a variance may be granted for a grade in excess of 15 percent but no greater than 18 percent.
3. **Exception for lots of record predating the Hillside Development Standards.** For a flag drive serving a legal lot of record created before the effective date of the Hillside Development Standards, Ordinance No. 2808, adopted December 3, 1997, a variance may be granted for a grade in excess of 15 percent [- option - , but no greater than 25 percent].
4. **Cumulative length limitation.** The cumulative length of all sections of a flag drive exceeding 15 percent grade approved through a variance under subsection F.2 or F.3 shall not exceed 200 feet.
5. **Fire Code compliance.** A flag drive approved under a variance granted under subsection F.2 or F.3 remains subject to the fire apparatus access requirements of the Oregon Fire Code, including any approval required by the Fire Code Official.
6. **Variance criteria.** A variance under subsection F.2 or F.3 shall meet the criteria for approval in chapter 18.5.5, Variances. Circumstances supporting a variance under this subsection include, but are not limited to, a demonstration, based on a stamped engineer’s drawings, that no alignment meeting the general 15 percent grade standard of this subsection can provide vehicular access to a buildable area of the lot, or that a steeper alignment would better avoid or reduce impacts to natural or physical features of the site, such as water resource protection zones, trees, rock outcroppings, or areas best left in an undisturbed natural state. In evaluating a variance under this subsection, the approval authority may consider unique or unusual site conditions, including topographic constraints, access limitations, and the avoidance or reduction of impacts to natural and physical features, in determining whether the requested grade is the minimum necessary to reasonably develop the lot while minimizing site disturbance. The Fire Code Official shall make a

recommendation on each variance application regarding fire apparatus access and fire and life safety, and the recommendation shall be considered by the approval authority.

B. Ownership Trigger

At the August 11th meeting, Planning Commissioners also discussed the possibility of limiting a steep-grade exception only to lots that have remained under the same ownership since the Hillside Ordinance took effect in 1997. In staff research into Jackson County records, seven of the 13 lots identified as potential candidates for driveway grade variances have changed hands since the ordinance change in 1997.

In staff's assessment, the problem with such an approach is that land use rights and limits in Oregon almost always run with the land, not with a particular owner. Grandfathered and nonconforming use rights transfer to new owners for exactly that reason, and there is no real tradition in municipal codes of tying a development standard like a driveway grade to unbroken ownership. Owner-based eligibility does typically show up in the farm and forest dwelling statutes, and even there the legislature had to spell it out expressly, the courts read it narrowly, and the entitlement generally still transfers once approved.

Were relief from the driveway grade standard to be conditioned upon continuous ownership, a lot that its 1997 owner could build on today would become unbuildable the day it is sold or inherited, which recreates the same no-relief problem the exception is meant to fix and pushes it onto buyers and heirs who had nothing to do with when the lot was created. This would raise the city's takings exposure rather than lowering it, and it would be difficult to administer since staff would need to track chain of title as an eligibility question, with the pool of qualifying lots shrinking over time until none were left.

Staff would note that Measure 37 tried to do something similar by making relief turn on when an owner acquired their property. It was essentially an ownership-date entitlement, and it created enough legal and administrative problems that the voters had to pass Measure 49 a few years later to rein it in and put the focus back on the land and clear standards. For staff, that history is a useful caution to keep in mind. The fairness argument for favoring longtime owners over someone who bought a steep lot knowing its limits is a real point the Commission can weigh, but it runs against the overwhelming practice in Oregon land use, and staff's recommendation is that the entitlement should run with the land so we are not creating unbuildable lots with no path to relief for future owners.

II. Procedural

18.5.9.020 Applicability and Review Procedure

Applications for Plan Amendments and Zone Changes are as follows:

B. Type III. It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City

Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.

1. Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
3. Land Use Ordinance amendments.
4. Urban Growth Boundary amendments.

C. Conclusions and Recommendations

In staff's opinion, the revisions above respond to the issues raised on August 11th and continue to provide a uniform, criteria-based relief mechanism for a defined set of lawfully created lots while preserving the protective purpose of the Hillside Development Standards and the independence of Fire Code review.

Staff recommend that the Planning Commission recommend approval of these proposed amendments to the City Council. The proposed ordinance is scheduled for a public hearing and first reading at the City Council on September 15, 2026.

D. Suggested Motion

"I move that the Planning Commission recommend that the City Council approve first reading of Ordinance No. 3309, titled AN ORDINANCE RELATING TO VARIANCES FOR FLAG DRIVE AND DRIVEWAY GRADES SERVING LEGAL LOTS OF RECORD CREATED PRIOR TO THE ADOPTION OF THE HILLSIDE DEVELOPMENT STANDARDS; AMENDING AMC 18.5.3.060, as amended in the August 25th staff report."

ORDINANCE NO. 3309

AN ORDINANCE AMENDING AMC 18.5.3.060 RELATING TO VARIANCES FOR FLAG DRIVE AND DRIVEWAY GRADES SERVING LEGAL LOTS OF RECORD CREATED PRIOR TO THE ADOPTION OF THE HILLSIDE DEVELOPMENT STANDARDS

Annotated to show deletions and additions to the Ashland Municipal Code sections being modified. Deletions are ~~bold lined through~~, and additions are **bold underlined**, and unchanged text that is omitted for brevity is indicated by “..”

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

WHEREAS, the City of Ashland adopted the Hillside Development Standards through Ordinance No. 2808 on December 3, 1997, establishing development standards for hillside lands, including maximum grade standards for flag drives and driveways; and

WHEREAS, subsection 18.5.3.060.F of the Ashland Municipal Code limits flag drive grades to a maximum of 15 percent and allows variances up to 18 percent for a limited cumulative length, but does not provide a variance pathway for legal lots of record created before the effective date of the Hillside Development Standards where topographic constraints prevent any driveway alignment from meeting the maximum grade standards; and

WHEREAS, a review of the City’s buildable lands inventory and Geographic Information System data identified 74 legal lots of record within the City of Ashland that were created before the effective date of the Hillside Development Standard, of which 13 lots are potentially subject to the Flag Drive standards to obtain compliant driveway access due to topographic constraints, demonstrating that the amendment addresses a circumstance of citywide applicability rather than an individual property; and

WHEREAS, land use decisions of the City, including decisions on variance applications, are subject to review by the Oregon Land Use Board of Appeals (LUBA), and establishing clear and objective approval criteria for driveway grade variances serving legal lots of record created before the Hillside Development Standards provides an adequate factual base and reviewable standards for such decisions; and

WHEREAS, in April 2026 the Land Use Board of Appeals remanded a City decision approving a driveway grade variance, concluding that subsection 18.5.3.060.F as currently written does not authorize a variance for a grade in excess of 18 percent under any circumstance; and

ORDINANCE NO. 3309

Page 1 of 4

WHEREAS, a variance process for flag drive grades serving legal lots of record created before the effective date of the Hillside Development Standards, Ordinance No. 2808 (adopted December 3, 1997), where topographic constraints prevent compliance with maximum grade standards, allows development of existing lots while preserving fire apparatus access requirements under the Oregon Fire Code; and

WHEREAS, the Planning Commission of the City of Ashland considered the proposed amendments at a duly advertised public hearing on **August 11, 2026**, which was continued to **August 25, 2026**, where, following deliberations, the Commission recommended approval of the amendments; and

WHEREAS, the City Council of the City of Ashland conducted a duly advertised public hearing on the proposed amendments on **September 15, 2026**; and

WHEREAS, the City Council of the City of Ashland, following the close of the public hearing and record, deliberated and conducted first and second readings approving adoption of the Ordinance in accordance with Article 10 of the Ashland City Charter; and

WHEREAS, in order to protect and benefit the health, safety, and welfare of existing and future residents of the City, it is necessary to amend the Ashland Municipal Code and Land Use Ordinance in the manner proposed, an adequate factual base exists for the amendment, the amendment is consistent with the Comprehensive Plan, and the amendment is fully supported by the record of this proceeding.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. Subsection 18.5.3.060.F [Additional Preliminary Flag Lot Partition Plat Criteria] of the Ashland Municipal Code is hereby amended to read as follows, and the remainder of section 18.5.3.060 remains unchanged:

18.5.3.060 Additional Preliminary Flag Lot Partition Plat Criteria

..

~~F. Flag drive grades shall not exceed a maximum grade of 15 percent. Variances may be granted for flag drives for grades in excess of 15 percent but no greater than 18 percent; provided, that the cumulative length of such variances across multiple sections of the flag drive does not exceed 200 feet. Such variances shall be required to meet all of the criteria for approval in chapter 18.5.5, Variances..~~

F. Flag drive grades.

1. General standard. Flag drive grades shall not exceed a maximum grade of 15 percent.

2. Exception for lots created after the Hillside Development Standards. For a flag drive serving a lot created on or after the effective date of the Hillside Development Standards, Ordinance No. 2808, adopted December 3, 1997, including a lot created through a flag lot partition, a variance

may be granted for a grade in excess of 15 percent but no greater than 18 percent.

3. Exception for lots of record predating the Hillside Development Standards. For a flag drive serving a legal lot of record created before the effective date of the Hillside Development Standards, Ordinance No. 2808, adopted December 3, 1997, a variance may be granted for a grade in excess of 15 percent.
4. Cumulative length limitation. The cumulative length of all sections of a flag drive exceeding 15 percent grade approved through a variance under subsection F.2 or F.3 shall not exceed 200 feet.
5. Fire Code compliance. A flag drive approved under a variance granted under subsection F.2 or F.3 remains subject to the fire apparatus access requirements of the Oregon Fire Code, including any approval required by the Fire Code Official.
6. Variance criteria. A variance under subsection F.2 or F.3 shall meet the criteria for approval in chapter 18.5.5, Variances. Circumstances supporting a variance under this subsection include, but are not limited to, a demonstration based on stamped engineer's drawings that no alignment meeting the general 15 percent grade standard of this subsection can provide vehicular access to a buildable area of the lot, or that a steeper alignment would better avoid or reduce impacts to natural or physical features of the site, such as water resource protection zones, trees, rock outcroppings, or areas best left in an undisturbed natural state. In evaluating a variance under this subsection, the approval authority may consider unique or unusual site conditions, including topographic constraints, access limitations, and the avoidance or reduction of impacts to natural and physical features, in determining whether the requested grade is the minimum necessary to reasonably develop the lot while minimizing site disturbance. The Fire Code Official shall make a recommendation on each variance application regarding fire apparatus access and fire and life safety, and the recommendation shall be considered by the approval authority.

SECTION 2. Severability. Each section of this ordinance, and any part thereof, is severable, and if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

SECTION 3. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 2 and 3) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the _____ day of _____, 2026, and duly PASSED and ADOPTED this _____ day of _____, 2026.

SIGNED and APPROVED this _____ day of _____, 2026.

ATTEST:

Alissa Kolodzinski, City Recorder

Tonya Graham, Mayor

Reviewed as to form:

Johan Pietila, City Attorney

Potential Staff Direction

Chapter 18 Code Amendments to Support Housing Development

The City Council has identified a set of Chapter 18 standards and administrative practices that are limiting land utilization and unnecessarily constraining housing development in Ashland. Council directs the Community Development Department to return within **60 days** with proposed code amendment concepts addressing each item below, organized into five categories: process and procedures, lot and density standards, emerging and progressive housing types, development standards creating uncertainty, and terminology. Each item should come back to the Planning Commission and City Council for review before formal adoption.

I. Process and Procedures

1. Pre-Application Conferences

Make pre-application conferences optional for Type I applications, and reassess the pre-application process as a whole to ensure it continues to deliver value proportionate to the time it adds. Referral departments, including Public Works, have scaled back the level of detail provided at pre-application — utility information that was previously provided as a matter of course, for example, is now often omitted.

2. Findings Adoption Timeline

AMC 18.5.1.060 provides that the hearing body deliberates and decides based on the record at the conclusion of the hearing, but in practice, written findings are not adopted that night — adoption is typically delayed two to four weeks, to a subsequent study session or the Commission's next regular meeting. Because the decision is not final and the appeal period does not begin until the decision is mailed, this gap directly extends the City's effective review timeline. Staff should prepare adoption findings in advance of the decision meeting whenever practical — including findings supporting a likely denial — so the Commission can adopt findings the same night in most cases, reserving evidentiary hearings and continuances for genuinely contested matters.

3. Administrative Property Line Adjustments

Property line adjustments should be processed administratively, in accordance with ORS 92, and should not require a new survey or a new plat filing in every case. Staff should identify the minimum documentation actually needed to verify a proposed adjustment and streamline the process accordingly.

4. Bonding of Required Improvements for Final Plat Release

Applicants should be able to bond required improvements in order to receive final plat approval, rather than completing all improvements before the plat can be recorded. Allowing bonding at final plat — consistent with the way many Oregon jurisdictions handle subdivision improvements — would let construction loans close and building permits issue on a normal timeline, instead of stalling behind completed public improvements.

5. Administrative Review Practices and Culture

Direct the Community Development Director to review current practices around staff-level discretion and referral of applications to the Planning Commission, with the goal of resolving more applications administratively where the code allows, and to report back on any changes needed to support that goal.

II. Lot and Density Standards

6. Lot Coverage

Remove impervious surfaces other than structures from the lot coverage calculation (AMC 18.6.1.030). Ashland currently counts gravel walkways, gravel pads, decks, and pervious concrete toward the coverage limit — a broader definition than most neighboring Rogue Valley communities use, which count structures only and address other impervious surfaces through stormwater review. Stormwater detention and retention requirements adopted since the lot coverage standard was created now manage runoff directly, making the inclusion of these other surfaces in the coverage limit redundant — a recent three-lot partition on Pine Street, for example, required roughly \$19,000 in on-site detention infrastructure to fully manage site stormwater. This change is also a practical prerequisite for several of the density items below.

7. Minimum Lot Size and the Performance Standards Option

Evaluate reducing standard minimum lot sizes (AMC 18.2.5.030) and expanding or more flexibly applying the Performance Standards Option overlay (AMC 18.3.9) to allow smaller lots and increased density in more areas of the city.

8. Additional Accessory Dwelling Units

Amend AMC 18.2.3.040 to allow up to two accessory dwelling units per lot, consistent with the approach the City of Talent has adopted.

III. Emerging and Progressive Housing Types

9. Flag Lot Standards

Amend AMC 18.5.3 to allow additional dwellings served by a single flag lot driveway and reduce driveway design standards, subject to Fire Department approval.

Staff should also address driveways and public rights-of-way that exceed an 18% grade in accessing lawful lots of record, an issue currently scheduled before the Planning Commission on 8/11 (the packet was not yet finalized at the time of this memo). Most properties will not be affected, but a handful face real hardship. At 319 West Street, a lot created in the late 1980s, the property is no longer developable because West Street exceeds a 24% grade and the condition of approval requires compliance with flag driveway standards. On Granite Street, lots served by an existing shared driveway that already exceeds 18% cannot be built on because any driveway extension is out of compliance from the outset (see the LUBA decision on 231 Granite Street).

Staff should also revisit the current rule applying flag lot driveway standards to any driveway longer than 50 feet, regardless of configuration. The screening standard in particular — a continuous strip of fencing or shrubbery along the driveway — makes sense for a true flag-pole driveway, but creates an unnecessary flammable landscaping strip and routinely triggers avoidable variance requests when applied to shared driveways or other long driveways that are not in a flag lot configuration.

10. Hillside Slope Standards

Clarify staff's discretion under AMC 18.3.10 to exempt or streamline review where only a small, isolated portion of a lot exceeds the 35% slope threshold — for example, a slope created by a driveway or building pad cut rather than the lot's underlying topography.

11. Supportive Single Room Occupancy (SRO) Housing

Amend Chapter 18 to explicitly define and permit supportive single room occupancy housing, consistent with recent Oregon legislation requiring cities to allow SRO development — buildings with at least four rented, lockable rooms that provide living and sleeping space but share kitchen or bathroom facilities — in many residential zones. SRO housing is one of the few housing types that can be delivered quickly and at genuinely low cost; Chapter 18 does not currently define it as a distinct use or specify which residential zones permit it.

12. Recreational Vehicles as an Allowed Housing Type

Allow the use of RVs as housing outright in all residential zones, limited to one RV per residential lot, provided the vehicle is not parked within the front yard setback. State law already recognizes RVs as an allowed housing type in the manufactured home park zone; there is no principled basis for permitting that use in one residential zone while prohibiting it in every other residential zone. RVs are among the most affordable, portable, and readily available naturally occurring housing types in the current market, and allowing one per lot city-wide, subject to the front-yard setback limitation, would meaningfully expand Ashland's supply of low-cost housing without new construction.

IV. Development Standards Creating Uncertainty

13. Solar Access Standards

Ashland's solar access standards (AMC 18.4.8) made sense when adopted, but modern energy codes — including Earth Advantage and similar standards — have significantly reduced homes' reliance on passive solar design, while the standard itself creates real costs: it requires wider lots than the underlying zoning district otherwise requires, reducing the number of lots achievable on north-south oriented streets, and its setback calculation — which measures slope from the midpoint of the subject property to a point 150 feet to the north — can attribute a steep slope to a lot that is not actually steep, particularly where a north-south oriented lot has any east-west cross-slope. At minimum, newly created interior lots within a single subdivision or partition should be exempted from solar setback requirements, while existing homes and properties on the project's north perimeter continue to be protected. Staff should also review the underlying setback calculation method to correct the slope-measurement distortion described above.

14. Landscape Buffers

Clarify that landscape buffer standards — including the eight-foot buffer required between parking spaces and structures — are intended for larger-scale, typically multifamily development, not every Site Design Review involving attached housing. Applied to a duplex, triplex, or quadplex, this buffer consumes site area without a clear benefit, since the parking space being buffered typically serves the very unit it sits beside rather than an unrelated property. Staff should evaluate a reduced or exempted standard for smaller attached housing types.

15. Conditional Use Permit Criteria

Define the “all other factors found relevant” catch-all in the conditional use permit approval criteria (AMC 18.5.4.050) with more specific, predictable factors. This catch-all is especially difficult to apply where a conditional use permit is triggered not by an actual change in use, but by a conflict between the number of units a zone allows and the Maximum Permitted Floor Area (MPFA) standard — as in a recent North Main Street application proposing four dwellings, the number of units the zone anticipates, that required a conditional use permit solely because the associated floor area exceeded the fixed MPFA cap. Staff should evaluate a more tailored approval pathway for requests to exceed MPFA that are otherwise consistent with the zone's allowed unit count.

16. Street Standards

Ashland's street design standards are difficult to meet in full on nearly any infill or partition application, and as a practical matter, most new subdivisions and land divisions require an exception. This functions as a significant, largely unintentional barrier to middle housing land divisions in particular, and adds uncertainty to any application involving frontage improvements — in at least one case, a substantial development proposal at East Main Street and Highway 66 has not moved forward, in part because full frontage improvements were estimated at roughly \$800,000. Staff should evaluate an administrative “Legacy Street” determination process, modeled on Medford's approach, under which Public Works can find that slope, utilities, existing trees, encroachments, and adjacent improvements — not the code standard alone — should determine the appropriate frontage improvement for an existing, substandard street, without requiring a variance or exception.

17. Middle Housing Land Divisions and Right-of-Way Improvements

Evaluate and correct the inconsistency between the City's treatment of standard partitions and Middle Housing Land Divisions on properties with substandard right-of-way improvements. The City currently allows a standard lot split on a property without full right-of-way improvements, but does not extend the same treatment to a Middle Housing Land Division on that same property — raising compliance concerns under the state's Middle Housing Land Division mandate.

V. Terminology

18. Accessory Unit Terminology

Amend Chapter 18 to replace the term “Accessory Residential Unit (ARU)” with “Accessory Dwelling Unit (ADU),” consistent with state statute.

For each item, staff should identify the specific code sections requiring amendment, any legal or state law considerations, and a recommended timeline for formal adoption. Items that can be addressed through the housekeeping amendment process already underway should be flagged for inclusion in that package; items requiring a public hearing should be scheduled as promptly as practical. The objective of this direction is not to resolve every open policy question within 60 days, but to ensure the City has a clear, staff-vetted path — with concrete next steps and a public process — for addressing each item.

Staff Response to “Chapter 18 Land Use Code Amendments: Direction to Staff to Reduce Housing Development Barriers and Ensure State Law Compliance”

Councilor Dahle and Councilor Sherrell have presented a request to Council to direct Community Development to address specific code amendments. These code amendments are external to the current workplan of the department.

Concern: These new requests will impact already adopted priorities of the Department.

The Community Development Department has an established workplan based on priorities set by Council and mandated by the State. This includes developing and implementing strategies from the Housing Production Strategy, participating in the development of the Transportation System Plan, preparing for code amendments related to the Community Wildfire Protection Plan, and implementing a significant number of state-mandate changes. Moving forward with these newly identified code amendments will likely remove or delay one or more of these priorities and thus should be considered in the context of the Department’s full workplan.

Concern: Staff capacity over the next 60 days.

Over the next 60 days, staff will be heavily strained to implement the State changes that shift a significant number of planning actions from legislative to administrative processes. These changes include preparing new forms, new notices, new templates, new flow charts, updating the website, etc. Staff’s capacity to prepare “code amendment concepts” for the eighteen proposed amendments will be limited.

Staff Recommendation: Direct staff to return October 20th with a project list of all ongoing city-requested planning projects, so that Council can consider Councilor Dahle’s and Councilor Sherrell’s proposal in the context of the department’s already established workload.

Hutchinson Cox

William H. Sherlock • Attorney • Partner
lsherlock@eugenelaw.com

Dawn A. Furtado • Senior Paralegal
dfurtado@eugenelaw.com

Zack P. Mittge • Attorney
zmittge@eugenelaw.com

Emil J. Sadofsky • Attorney
esadofsky@eugenelaw.com

August 25, 2025

Via E-mail: PC-public-testimony@ashland.or.us & derek.severson@ashlandoregon.gov

Ashland City Council
c/o Ashland Planning Department
Community Development and Engineering Services Building
51 Winburn Way
Ashland, OR 97520

RE: PA-L-2026-00020; Ordinance #3309
City File No. PA-L-2026-00020
Our Clients: Len and Karen Eisenberg, Kent and Pamela McLaughlin

Dear Planning Commission:

On behalf of our clients, Len and Karen Eisenberg, and Kent and Pamela McLaughlin, we hereby provide comments in opposition to the proposed amendment to flag drive standards in the proposed amendments to the City of Ashland Municipal Code. Please include this letter in the record of these proceedings and provide copies of all future notices associated with the proposed amendments to our office.

Our office submitted a letter, dated August 10, 2026, in opposition to the original proposed language of PA-L-2026-00020, and attorney Emil Sadofsky appeared at the August 11, 2026, Planning Commission hearing to provide a statement summarizing our objections to the proposed ordinance amending Ashland Municipal Code 18.5.3.060 (the “Ordinance”). Planning Commission staff’s changes to the language of the Ordinance do not address the objections we raised, the concerns of Ashland residents, or the Planning Commission’s reasoning for rejecting the Ordinance.

The proposed changes to the language of the Ordinance do not materially change the substance of the Ordinance as originally drafted. The new language changes the paragraph structure and wording of the Ordinance and may serve to make the Ordinance clearer. The new language also makes express reference to variance criteria that were already applicable to the original ordinance. Nothing in the

eugenelaw.com



940 Willamette Street, Suite 400
Eugene, Oregon 97401

Mail: PO Box 10886
Eugene, Oregon 97440

Phone: (541) 686-9160
Fax: (541) 343-8693

new language addresses any of the concerns raised in our letter of August 10, 2026. A brief summary of those arguments follows: (1) the proposed changes are contrary to state law; (2) the proposed changes are contrary to the City of Ashland's Comprehensive Plan; (3) the proposed changes are contrary to the City of Ashland's 2025 Community Wildfire Protection Plan; (4) the proposed changes negatively impact environmental and geological public interest; (5) the proposed changes will make Ashland an extreme outlier among Oregon municipalities with respect to the driveway grades it allows; and (6) the proposed changes lack a reasonable relationship to legitimate development needs. Our August 10, 2026, letter also noted that there was no indication that, under AMC 18.5.3.060.I, Planning Commission staff consulted with the Fire Department. After testimony from the Fire Department at the August 11, 2026, public hearing, we are convinced that the Fire Department was consulted. However, the Fire Department representative's failure to articulate objective standards for when the Fire Department would deny a variance in excess of 18% does nothing to eliminate concerns over subjective and *ad hoc* standards for approval of dangerously steep driveways. For a full treatment of these issues, refer to our letter of August 10, 2026, which we have attached to this letter as **Exhibit 1**.

A. The City of Ashland's Exposure to Inverse Condemnation Liability Based on the 1997 Hillside Development Standards is Minimal.

Government action that deprives an owner of all economically viable uses of their land can constitute a taking and entitle the owner to a claim for compensation against the government actor. Article I, section 18, of the Oregon Constitution. An owner may also bring a federal claim under the Fifth Amendment to the United States Constitution. *Knick v. Twp. of Scott*, 588 U.S. 180, 185 (2019). The standard under Oregon law is that a regulation constitutes a taking only when it deprives the owner of "any economically viable use of the property." *Coast Range Conifers, LLC v. State*, 339 Ore. 136, 150 (2005). Oregon statutory law allows owners to seek compensation for certain regulations that reduce the value of their property. ORS 185.305. However, the statutory remedy is never available when the regulation was passed for the protection of public health and safety. The Ordinance proposes to amend the language of the Ashland Land Use Ordinance ("ALUO") that expressly states its purpose to "promote public health [and] safety..." AMC 18.5.3.010(D). Thus, the avenue for an owner of a hillside lot to seek compensation from the City of Ashland for denial of a development permit based on the city's driveway grade is barred as a statutory claim.

Both Oregon and federal constitutional law require claimants alleging a regulatory taking show that the challenged regulation deprived their property of all economically valuable uses. Regulations that make a lot difficult to develop for the owners intended use do not give rise to a claim for compensation from the regulator. The burden is on the owner to show that no economically viable use is possible given the regulatory framework. The City of Ashland's exposure to a claim for compensation from owners affected by the hillside development standards is minimal because those owners must show that the regulations render the parcel entirely unbuildable and unsuitable for any other use, including sale to adjacent property owners. To make this showing, the landowner must demonstrate that no development plan or other use is available under the current regulatory framework.

B. The Proposed Changes Do Nothing to Insulate the City of Ashland Against Inverse Condemnation Liability.

Under very limited circumstances, an owner can make a federal claim for compensation based on a regulation reducing the value of the owner's land; however, an owner's knowledge of the regulation at the time of purchase generally defeats such a claim. Where a regulation effects a reduction in value of land the court considers: (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with investment-backed expectations; and (3) the character of the governmental actions. *Bridge Aina Le'a, LLC v. State Land Use Comm'n*, 950 F.3d 610, 617 (2020). Where owners purchased land with constructive knowledge of pending land use regulations that would reduce the land's value, the court held that the owner had no reasonable investment backed expectations of using the land in a manner that did not conform with the pending regulations. *Dodd v. Hood River County*, 317 Ore. 172, 185 (1993). The existence of Ashland's already adopted hillside development standards is an even stronger argument against investment backed expectations than in *Dodd* because the regulations in *Dodd* had not been fully adopted at the time the landowners took possession. Any owners seeking compensation under federal law for the reduction in value of their land based on the hillside development standards will need to demonstrate that their possession of the land occurred prior to their notice of the Ashland hillside development standards.

C. The Planning Commission Has Already Rejected the Ordinance for Good Reason.

The proposed changes to the Ordinance do nothing to ameliorate the concerns of residents or the potential risks to public safety and health. At the August 11, 2026, public hearing, the Planning Commission voted unanimously to reject the Ordinance. Commissioner Maher's motion was based on the importance of considering the safety and legality of driveway slopes and whether increasing the variance served the public good. He questioned the benefit to the public of making an exception for such a small number of lots. Commissioner Maher's concerns are well founded. Passing the Ordinance caters to the desires of a small group of elite landowners and disregards the needs and safety of the vast majority of Ashland residents.

After the Planning Commission passed the motion to deny the Ordinance, the Planning Commission passed another motion to continue the hearing with amended language. The stated reasoning for the second motions was to: (1) create a more clear and objective standard; (2) to include language that limits application of the variance exception to owners who had purchased the lot after adoption of the city hillside standards. The proposed new language of the Ordinance does nothing to address the Planning Commission's requests. The new language does not create a more clear and objective standard. Instead, it references directly the standards that would already have been applied to a variance request. The proposed new language does not limit the application of the variance exception to legacy owners, failing to provide the City of Ashland with additional protections against inverse condemnation exposure.

D. Conclusion

The new language of the Ordinance is substantively indistinguishable from the original language. The Planning Commission has already rejected this proposal for good reason. The Ordinance endangers the public for the benefit of the small group of wealthy landowners. We urge the Planning Commission to remain consistent in their rejection of the Ordinance.

Very truly yours,

HUTCHINSON COX

William H. Sherlock

Zack P. Mittge

Emil J. Sadofsky

EJS/df

Hutchinson Cox

William H. Sherlock • Attorney • Partner
lsherlock@eugenelaw.com

Dawn A. Furtado • Senior Paralegal
dfurtado@eugenelaw.com

Zack P. Mittge • Attorney
zmittge@eugenelaw.com

August 10, 2026

Via E-mail PC-public-testimony@ashlandoregon.gov and derek.severson@ashlandoregon.gov

Ashland Planning Commission
c/o Planning Supervisor Derek Severson
Ashland Planning Department
20 East Main Street
Ashland, OR 97520

RE: PA-L-2026-00020; Ordinance #3309
City File No.: PA-L-2026-00020
Our Clients: Len and Karen Eisenberg, Kent and Pamela McLaughlin

Dear Planning Commissioners:

On behalf of our clients, Len and Karen Eisenberg, and Kent and Pamela McLaughlin, we hereby provide comments in opposition to the proposed legislative amendment (Ordinance #3309) to flag drive standards in the proposed amendments to the City of Ashland Municipal Code. Please include this letter in the record of these proceedings and provide copies of all future notices associated with the proposed amendments to our office.

A. The Proposed Changes are Contrary to State Law.

Although the City staff initially packaged the flag driveway amendments with the legislative amendments for Oregon Senate Bill (SB) 974 (2025), the proposed amendments to the flag drive standards at Ashland Land Use Ordinances (ALUO) 18.5.3.060.F are both contrary to state law and not legislatively required.

Oregon municipalities exercise planning and zoning responsibilities in accordance with state comprehensive land use planning requirements. ORS 197.175 mandates that cities and counties prepare, adopt, amend, and revise comprehensive plans in compliance with goals approved by the Land Conservation and Development Commission and enact land use regulations to implement those comprehensive plans. ORS § 197.175. The Oregon Legislative Assembly has found that uncoordinated land use threatens the orderly development, environment, health, safety, order, convenience, prosperity, and welfare of the people of Oregon. ORS § 197.005.

eugenelaw.com



940 Willamette Street, Suite 400
Eugene, Oregon 97401

Mail: PO Box 10886
Eugene, Oregon 97440

Phone: (541) 686-9160
Fax: (541) 343-8693

Pursuant to ORS 197.180, state agencies and local governments must carry out planning duties and take actions affecting land use in compliance with adopted goals and in a manner compatible with acknowledged comprehensive plans and land use regulations. ORS § 197.180. Due to the statewide concern relating to the availability of safe housing, local governments must ensure that development standards do not discourage needed housing through unreasonable cost or delay. ORS 197.307. However, local governments must maintain clear and objective standards for safety through the authorized issuance of land use regulations that restrict or prohibit activities for the protection of public health and safety. ORS § 195.305(3)(b).

While SB 974 was adopted in June of 2025 to streamline certain residential development processes, it is very careful not to impact residential design standards that protect the public from natural hazards, and particularly the risk of fire. Indeed, the Senate Bill's streamlining expressly "does not apply to land use regulations or requirements that are related to...accessibility, fire ingress or egress, public health or safety...or that implement statewide planning goals relating to....natural hazards." SB 974, § 8(2).

However, staff are still trying to boot-strap amendments to section 18.5.3.060.F, which would adversely impact accessibility, fire ingress and egress, public health and safety, and the City's attempts to protect the public from natural hazards.

The specific provision at issue, section 18.5.3.060.F, establishes the maximum grade for driveways that serve flag lots. Under the land use standards currently in effect, the maximum grade for a flag drive is 15%, but the City may permit variances which allow driveway grades up to 18%.¹

As the Oregon Land Use Board of Appeals (LUBA), recently determined "[t]he plain terms of ALUO 18.5.3.060.F do not allow a variance of over 18 percent grade." *Eisenberg et al. v. City of Ashland*, Or. LUBA (LUBA No. 2025-053; April 29, 2026) (*slip op* at 15).

The proposed amendments would eliminate that 18% maximum grade cap for flag drives serving legal lots of record that were created before the effective date of the Hillside Development Standards, Ordinance #2808 (adopted December 3, 1997). Under the terms of the proposed amendments, the 18% cap on flag drive grades does not apply to these existing lots and would only expressly apply to new flag drives after the date of the amendment.²

¹ "Flag drive grades shall not exceed a maximum grade of 15 percent. Variances may be granted for flag drives for grades in excess of 15 percent but no greater than 18 percent; provided, that the cumulative length of such variances across multiple sections of the flag drive does not exceed 200 feet. Such variances shall be required to meet all of the criteria for approval in chapter 18.5.5, Variances."

² "Flag drive grades shall not exceed a maximum grade of 15 percent. Variances may be granted for flag drives serving newly created lots for grades in excess of 15 percent but no greater than 18 percent; provided that the cumulative length of such variances across multiple sections of the flag drive does not exceed 200 feet. Variances may also be approved for grades in excess of 18 percent for driveways serving pre-existing legal lots of record which would otherwise be inaccessible. Such variances shall be required to meet all of the criteria for approval in chapter 18.5.5, Variances."

The Oregon State Fire Code establishes minimum standards for the protection of life and property against fire, based on applicable standards prescribed from time to time by the National Fire Protections Association. ORS § 476.120; OAR 837-039-0006(1). To establish uniform protections throughout the state, the Oregon state legislature charged local jurisdictions with adopting either the state fire code or a local fire code that is equal to or more stringent than the protections in the state fire code standards. OAR 837-039-0006(2).

In this case, the proposed amendment is contrary to state law, as it would allow development that is inconsistent with the slope requirements of the fire code. In particular, Appendix D, section D103.2 of the Oregon Fire Code, adopted and unmodified by the City of Ashland, specifies that “Fire apparatus access roads shall not exceed 10% in grade.”³ Or. Fire Code app. D, § D103.2 (2025).⁴

As mentioned, SB 974 does not require the City to adopt variance standards to its fire ingress or egress standards. Additionally, the proposed amendments are contrary to the minimum standards imposed by the Oregon Fire Code. Therefore, we respectfully request that the Planning Commission recommend removal of the proposed amendments to ALUO 18.5.3.060.F.

B. The proposed change is contrary to the City of Ashland’s Comprehensive Plan.

The proposed amendments to ALUO 18.5.3.060.F are also inconsistent with the City’s comprehensive plan and specifically the City’s wildfire hazard provisions. The City’s comprehensive plan emphasizes the heightened risk and significant adverse impacts posed by wildfire in the community and particularly the risks of fire in the wildland/urban interface stating:

Wildfire hazard presents an unusually high threat to very important area environmental resources in Ashland, particularly in the forested area south of town. A wildfire in that area would adversely affect soils and slope stability and lead to increased erosion. If wildfire reached the Ashland watershed, resulting erosion would affect drinking water quality. Vegetation loss during a wildfire would increase precipitation runoff, thereby increasing flood potential. It would reduce shade and increase stream temperatures – a condition that would adversely affect fish resources. Air quality would suffer during the wildfire burn, especially if the valley was experiencing an air inversion – a frequent event during the local wildfire season.

* * * *

During the past decade many people have declared their intention to ‘get back to nature.’ Many people are leaving metropolitan areas, building houses in forested natural settings, and leaving vegetation right up to the sides of their dwelling. Although

³ The provision of Appendix D is specifically adopted into the requirements of the Oregon Fire Code by section 101.2.1.

⁴ ORC app. D, §103.2 was adopted by the City of Ashland in its Municipal Code under Section 15.28.010 and left unmodified by Section 15.28.070.

EXHIBIT 1

no guarantee can protect a house in such a setting from wildfire, preventative measures can be taken to reduce the hazard. Recent land use policies have put added development pressure on hillsides and valley lands are not being preserved for agricultural purposes. The Ashland city limits abut National Forest land in these hillside areas which lead immediately into the Ashland Watershed.

City of Ashland, Or., *Comprehensive Plan* § 4.25, at 29–30 (July 2005). [hereinafter *Comprehensive Plan*]. To protect “life, property and environmental resources in Ashland’s suburban/wildland interface area from the devastating effects of wildfire” and to decrease the risks of wildfire “spreading to the Ashland watershed from the urban/wildland interface area” the City makes a special provision for fire access. *Id.* at 31. Specifically, Policy 49 of the Comprehensive Plan requires “more than one ingress/egress route or road widths wide enough to accommodate incoming fire apparatus and evacuating residents simultaneously in an emergency situation.” *Comprehensive Plan* § 4.25, Policy 49, at 31 (July 2005).

In essence, this policy requires that at least one access point must be sufficient to accommodate fire apparatus and emergency response access. Because ALUO 18.5.3.060.I designates all flag drives as Fire Apparatus Access Roads subject to the Oregon Fire Code requirements and because flag drives typically are the sole access point to properties on flag lots, the proposed elimination of the maximum variance grade of 18% is contrary to Ashland policy and would insufficiently accommodate flag lot access to fire apparatus and emergency response vehicles.

The 10% grade selected for the Oregon Fire Code recognizes the limitations of fire and emergency vehicles. A fire truck when fully loaded can weigh in excess of 30,000 to 80,000 pounds. Grades of fire apparatus access routes can severely impact the ability of these vehicles to access a fire, as a driveway that has an angle of approach that is too steep for the vehicle will be inaccessible. Moreover, steep grades pose significant risks for these vehicles that can stall on steep grades or lose traction and braking ability (particularly during adverse weather conditions such as rain, snow or ice).

As the proposed amendment would make the sole fire apparatus access for flag lots insufficient to accommodate fire apparatus and emergency response vehicles, it poses an unacceptable risk to dwellings with the wildland/urban interface as well as a heightened community-wide risk of fire, erosion, flooding, and impact to the City’s drinking water. Accordingly, we respectfully request that the Planning Commission recommend denial of this aspect of the proposed amendment.

C. The proposed change is inconsistent with the City of Ashland’s 2025 Community Wildfire Protection Plan.

In October of 2025, partially in response to the 2020 Almeda Fire which ignited within the Ashland City limits and “devastated neighboring communities and claimed three lives,” the City proactively adopted its Community Wildfire Protection Plan (CWPP). The CWPP is a comprehensive blueprint to protect Ashland from wildfires designed around a series of specific initiatives. City of Ashland, *2025 Ashland Community Wildfire Protection Plan* 20, 23 (June 24, 2025) [hereinafter *Ashland CWPP*].

As with the comprehensive plan, the CWPP emphasizes the difficulties posed by development within the wildland/urban interface, and specifically the risks posed by limited evacuation routes:

It is not a question of if, but when, another major wildfire will affect Ashland. How and where that fire (and subsequent fires) burns could profoundly shape the city's future. While we may be fortunate once again, there is also the risk of a worse-case scenario. Assessments show that Ashland and nearby communities face high wildfire risk, driven by natural conditions and human influences. The growing built environment, including homes, infrastructure, and cultural landmarks **is increasingly vulnerable due to expansion into fire-prone areas and limited evacuation routes** (Federal Emergency Management Agency [FEMA], 2023).

Ashland CWPP, at 68 (emphasis added). The CWPP identifies evacuation as the top concern amongst Ashland residents. *Id.* at 90. Driveway length and width were also evaluated as “they play a crucial role in allowing first responders to reach properties safely and ensuring a smooth evacuation for occupants.” *Id.* at 91. The CWPP requires that the City “[a]ssess wildfire hazards on primary evacuation routes and possible refuge areas and mitigate.” *Id.* at 102, HS-2.1.

The proposed amendment contradicts this initiative. Steeper flag drives would allow the creation of additional residential development in the wildland/urban interface which would be inaccessible to first responders attempting to reach the property, and on slopes that are prone to rapid and intense fires.⁵

Moreover, allowing lots of record to merely opt out of necessary fire access via the City's variance process runs directly counter to the City's commitment to “Bolster wildfire resilience requirements for **city development through consistent planning and zoning**.” *Ashland CWPP*, at 196, CO-1.2 (emphasis added).

Wildfire risks are a citywide concern and require consistent application of current standards to ensure citywide protection. As the proposed amendments to ALUO 18.5.3.060.F constitute abject favoritism to allow a single property to jeopardize the fire safety for the entire community based on a special variance carve-out in the code, the amendments are wholly inconsistent with the CWPP and should not be incorporated with the proposed amendments.

⁵ As pointed out in the comprehensive plan:

“Steep slopes intensify wildfire in two ways. They increase precipitation runoff, decrease soil moisture and create dry vegetation. Vegetation moisture stress was particularly evident in the summer of 1981 when Fall seemed to come early to the hills south of town. This leaf color change was not ‘fall color,’ but drying caused by a lack of moisture. Wildfire also burns more intensely and faster on a steep slope by pre-heating the vegetation ahead of the actual fire front. Narrow, steep canyons act very much like a chimney during a wildfire, funneling heat and fire upward.” *Comprehensive Plan*, § 4.25, at 30.

D. The Proposed Amendments to ALUO 18.5.3.060.F Negatively Impact Environmental and Geological Public Interest.

Beyond wildfire prevention, the City of Ashland's existing regulations explicitly recognize that development on steep slopes creates environmental and geological hazards including soil erosion, sedimentation of lower slopes, and slope failure. *Comprehensive Plan* § 4.11, at 10-12 (July 2005). The current regulatory framework aims to protect natural and topographic character, environmental resources, aesthetic qualities, and restorative value of lands. *Comprehensive Plan* § 4.11, Policy 5, Policy 13, at 11-12 (July 2005). Increasing permissible grades for flag drives would directly undermine these protective purposes by authorizing more intensive disturbance of steep terrain.

The proposed amendment would increase the cumulative length and steepness of grading permitted for flag drive construction, thereby expanding the area of hillside disturbance and intensifying erosion potential. Steeper grades accelerate stormwater runoff velocity, increasing erosive force and sediment transport to lower slopes. Construction of driveways on grades exceeding current variance limits would require more extensive cut-and-fill operations, resulting in the destabilization of natural slope profiles and increasing landslide risk.

Multiple Oregon jurisdictions require geotechnical reports prepared by registered engineering geologists or geotechnical engineers for development on slopes of 15% or greater, recognizing that professional analysis of site geology, soil strength, slope stability, and erosion potential is essential to protect public safety and environmental resources. Lebanon, Or., Municipal Code § 16.11.040 (2026). These reports must demonstrate that proposed development will result in suitable, stable building sites and must provide recommendations for grading procedures, corrective measures, and methods to maintain slope stability while minimizing erosion and environmental variance from natural conditions. Lebanon Municipal Code § 16.11.040. The necessity for such professional analysis underscores the significant geological risks associated with steep slope development. Increasing permissible flag drive variance grades would only exacerbate these risks.

E. The Proposed Amendments to ALUO 18.5.3.060.F Would Allow Flag Driveway Grades Far Steeper Than Any Other Jurisdiction in Oregon.

A search through multiple county and city codes throughout counties or towns in Oregon demonstrate that no other jurisdiction would allow flag lot driveways with a 24% grade, which is the grade of the above referenced DeBoer property that is clearly the subject of this proposed and ill-advised code amendment. This consistent recognition that steep grading poses heightened safety risks that require strict and consistent regulation is only furthered by the county and city codes' shared common purposes: ensuring public health, safety, and general welfare; addressing potential risks from steeply sloped sites and geologic hazard areas; minimizing hazards from fire, water, and unstable soils; ensuring slope stability and environmental resource protection; and reducing risks of hillside erosion, sedimentation, landslide damage, loss of vehicular control, impediments to emergency access, and infrastructure failures.

Jackson County, Oregon

Jackson County's Land Development Ordinance 9.9.5.A.5 states that, "[w]hen the road grade exceeds 10%, the fire district or, if not within a fire district, the County fire safety inspector or Department of Forestry shall be consulted to determine whether additional fire safety measures are necessary to allow for a maximum finished grade of 15%. A grade of up to 18% may be allowed for intervals of up to 100 feet provided there are no more than three (3) 100-foot sections of over 15% grade per 1,000 feet. The approach from a public road or private road cannot exceed 10% grade for a distance of 40 feet."

Oregon City, Oregon

In Oregon City, "[n]o driveway with a slope of greater than fifteen percent shall be permitted without approval of the city engineer." Oregon City, Or., Municipal Code § 16.12.035.K.3. Additionally, the city engineer is authorized to deny driveway access if a proposed driveway would cause a significant traffic safety hazard. Oregon City, Or., Municipal Code § 16.12.035.L.

Portland, Oregon

Portland allows driveway grades up to 15%. Additionally, Portland permits grades up to 18% with sprinklers, if approved by the fire official. Portland, Or., City Code tit. 17, § 17.28.110 (2026).

Lake Oswego, Oregon

Lake Oswego strictly follows the Oregon Fire Code for grading maximums. Consequently, Lake Oswego's maximum driveway grade is set at 10%, with exceptions upon approval up to 15% as grades greater than 15% add additional hazards and create the possibility of hazardous conditions for firefighting and medical responses.

Roseburg, Oregon

Roseburg's development regulations require that a driveway used to access parking must have a maximum grade of 15% at any point. Roseburg, Or., Municipal Code § 12.06.030(Q)(4) (2026). Additionally, with the approval of the Fire Chief, driveways that are greater than 12% grade and 100 feet in length may have intermittent sections of grades up to a maximum of 20% provided that: (i) The 100-foot distance back from the structure maintains the 15% grade described herein; (ii) Travel widths, turnouts, and level pad areas are provided as determined necessary for fire protection and emergency access purposes; and (iii) An approved fire apparatus turnaround area having a grade no greater than 10% is provided. Roseburg Municipal Code § 12.04.100(D)(8)(e).

Furthermore, Roseburg's hillside development overlay regulations apply to areas with slopes greater than 12% and require that development ensure public health, safety, and general welfare while addressing risks from steeply sloped sites and geologic hazard areas. Roseburg Municipal Code § 12.04.100(A), (C). The regulations aim to minimize hazards from fire, water, and unstable soils, ensure

slope stability, protect environmental resources, and reduce risks of erosion, sedimentation, and landslide damage. Roseburg Municipal Code § 12.04.100(A). The City has authority to issue stop work orders and require restoration when development alters hillside areas in violation of code provisions, as such development constitutes a public nuisance posing risks to public health, safety, and welfare. Roseburg Municipal Code § 12.04.100.

Lebanon, Oregon

Lebanon's steep slope development overlay zone applies to residential areas with slopes of 15% or greater to provide for adequate access for emergency services, protect public health and safety, and minimize the potential for earth movement and resultant hazards to life and property, among other key purposes. Lebanon Municipal Code § 16.11.040(A). Except for lots, parcels and roads created prior to the adoption of Lebanon's 1980 Comprehensive Plan and its 1980 Zoning Ordinance, Lebanon's code does not permit new driveways where street grades exceed 15%. Lebanon Municipal Code § 16.11.040(E)(2)(b)(i).

Sheridan, Oregon

Sheridan's hillside development overlay applies to properties with slopes of 10% or greater. Sheridan, Or., Municipal Code § 16.290.020 (2025). Sheridan's code requires that grades and alignments of driveways in hillside areas must provide maximum safety and convenience, with maximum intermittent grades of 15% for maximum distances of 200 feet and maximum sustained grades of 10%. Sheridan Municipal Code § 16.290.090. Grading performed within hillside development areas must account for environmental characteristics including geological features, stream beds, drainageways, and tree cover, and must utilize best engineering practices to avoid erosion, slides, and flooding while having minimal environmental effect. Sheridan Municipal Code § 16.290.100(A).

Phoenix, Oregon

Phoenix strongly discourages flag lots within its boundaries, but where proposed, flag lot grading may not exceed 12% with allowances for residential streets to have segments with grades up to 15% for distances no greater than 250ft. Phoenix, Or., Land Dev. Code § 3.5.2(I)(3) (2026).

F. The Proposed Amendments to ALUO 18.5.3.060.F Do Not Appear to Comply with ORS § 368.039(3).

Under AMC 18.5.3.060.I: "Flag drives and fire work areas shall be deemed Fire Apparatus Access Roads under the Oregon Fire Code and subject to all requirements thereof." Accordingly, flag drives are deemed Fire Apparatus Access Roads and are therefore subject to ORS 368.039, which states, in relevant part:

3. Before adopting or amending any comprehensive plan, land use regulation or ordinance that establishes specifications and standards for roads and streets, a

governing body of a county or city shall consult with the municipal fire department or other local firefighting agency concerning the proposed specifications and standards. The county or city governing body shall consider the needs of the fire department or firefighting agency when adopting the final specifications and standards. [1997 c.409 §1]

ORS § 368.039. It does not appear from the material provided to the public thus far that the City has consulted the local Fire Marshal or Fire Department as to the advisability of allowing the development of a flag lot that has only a single access driveway in excess of 200 feet with a 24% grade.

G. The Proposed Amendments to ALUO 18.5.3.060.F Lack a Reasonable Relationship to Legitimate Development Needs.

Oregon law requires that land use regulations imposing conditions or restrictions on development bear a reasonable relationship or nexus to the impacts created by the proposed use. *Dolan v. City of Tigard*, 512 U.S. 374, 387 (1994). A regulatory requirement must be roughly proportional to the use of the property rather than serving as a pretextual excuse for imposing conditions when a landowner seeks permits. *Id.* at 391. Conversely, an amendment that relaxes protective standards of variances must demonstrate that the relaxed standards adequately protect legitimate public interests and that special circumstances relating to a specific piece of land make compliance with applicable zoning provisions “an undue or unnecessary hardship.” *Id.* at 380.

The proposed amendment seeks to accommodate a specific development proposal requiring driveway grades exceeding current variance limits. However, the fact that a particular parcel's topography is incompatible with existing safety and environmental standards further evidences that increased or eliminated grading maximums are unreasonable and unsafe. Oregon municipalities consistently maintain that slopes of certain steepness present inherent unsuitability for development regardless of individual landowner preferences. The proposed amendment would move regulatory policy away from this protective framework without evidence of safely accommodated increased grades or adequately protecting legitimate public interests including public health and safety and mitigation of environmental and geological impacts.

Oregon's statewide land use planning framework emphasizes coordination to protect health, safety, and environmental quality. ORS § 197.005. The overarching principles guiding Oregon's land use program include providing a healthy environment, ensuring a desirable quality of life, and equitably allocating benefits and burdens of land use planning ORS § 197.010. Relaxing hillside development standards to accommodate individual development preferences would shift safety and environmental burdens onto the broader community while concentrating development benefits to individual landowners, contrary to these equitable allocation principles.

Conclusion

Oregon law expressly authorizes municipalities to enact land use regulations that restrict or prohibit activities for protection of public health and safety. ORS § 195.305. The current 18% variance limit for flag drives represents a carefully calibrated balance between development opportunity and public health and safety protection. Eliminating this threshold would move Ashland's standards in the opposite direction from the protective approach reflected in Ashland's existing regulations and comparable Oregon jurisdictions and would undermine the foundational public health and safety purposes of the municipal code.

Neither Oregon law nor SB 974 requires the proposed amendment ALUO 18.5.3.060.F. The proposed amendment is not only contrary to fire protections in state law, the Ashland Comprehensive Plan, and the 2025 Ashland Community Wildfire Protection Plan, but are also contrary to other critical environmental and geological concerns.

Oregon law authorizes municipalities to restrict development to protect public health, safety, and environmental resources, and courts recognize that property access rights are subordinate to legitimate governmental interests in regulating steep slope development. The proposed amendment lacks reasonable justification, as the unsuitability of certain parcels for development under existing standards does not establish that Ashland should weaken those standards. Maintaining current grade limitations protects the public health, safety, environmental quality, and long-term community welfare that Ashland's code regulations already aim to secure.

Thus, we respectfully request that the Planning Commission recommend rejection of the proposed variance amendment.

Respectfully submitted,

HUTCHINSON COX



William H. Sherlock



Zack P. Mittge

WHS/df

Ordinance #3309, Planning Action PA-L-2026-00020

From Kent McLaughlin <kbmc22@gmail.com>

Date Tue 8/25/2026 9:50 AM

To Derek Severson <derek.severson@ashland.or.us>; Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

[EXTERNAL SENDER]

Dear Planning Commission Members,

I am writing to oppose the proposed amendments to the flag drive standards in the Ashland Municipal Code ALUO 18.5.3.060.F.

On August 11, 2026 the Planning Commission unanimously rejected the proposed amendments. Even after the vote, City staff still asked the Planning Commission to consider a revised proposal to allow excessively steep and dangerous driveways. These proposed changes would **still** allow flag driveway grades far steeper than any other jurisdiction in Oregon. This will endanger Ashland citizens, first responders, and the environment.

The City's proposal would **still** apply to only 13 lots. And **only 6** of the 13 lots remain held by the same owners [families] since December 1997. And most importantly, the owners of 'a lot in question' knew of the current requirement/ordinance at the time they purchased the lot, or should have known, and now it seems, are seeking to use their influence to change the requirement. This situation is quite similar to that of a purchaser of land who seeks to eliminate a private nuisance, obstacle or **Code** that **existed at the time they bought the property**.

Also, the City's revised proposal seems to leave the ultimate decision on each variance request in the hands of **one individual**, the Fire Code Official. I thought that decisions were the responsibility of the City Council via the Planning Commission when following their ordinances.

Finally, it is my understanding that the owners of the lot in question have been offered their original purchase price plus 10% and the buyer gifting the lot back to the City as "open space/wildland"... AND... gifting it in the current/present owner's name.

In the interest of the health and safety of our neighbors, our first responders, our community, and our environment, I respectfully request that the Planning Commission **once again** reject Ordinance #3309/Planning Action PA-L-2026-00020.

Sincerely,
Kent B. McLaughlin
234 Strawberry Lane
Ashland, OR 97520



Virus-free. www.avast.com

Dear Planning Commission,

We noticed a misspelling in our letter submitted for the August 25, 2026 meeting.
Commissioner Liniger made the comments we referred to, not Commissioner Lininger.

Thanks again for your service,

Jay Reeck and Sarah Sameh



Outlook

Exempting lots prior to 1997 from the 18% restriction

From Charlie Hamilton <charliehamilton2277@gmail.com>

Date Tue 8/25/2026 6:09 PM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

[EXTERNAL SENDER]

I wanted to express my support for approving the exemption for lots established prior to 1997 for the 18% driveway restriction. Our lot was created prior to 1997 and once the 18% ruling was approved our lot became unbuildable. We have been paying taxes on this lot since.

I believe this is the City's chance to undue the takings that occurred with this ordinance. The number of lots effected to small but the impact to each owner is huge.

Please take this chance to correct this wrong please vote yes.

Charlie Hamilton
(541) 944-3976

Planning Action PA-L-2026-00020 - Draft Ordinance No. 3309 Amending AMC 18.5.3.060 (Flag Drive Grades)

From Chris Hearn <chearn@davishearn.com>

Date Tue 8/25/2026 6:20 PM

To Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

 1 attachment (201 KB)

Hearn Submission to Planning Commission Record PA-L-2026-00020 - 08-25-2026.pdf;

[EXTERNAL SENDER]

Dear Planning Commission:

Please include the attachment in the Commission's record concerning Planning Action PA-L-2026-00020 - Draft Ordinance No. 3309 Amending AMC 18.5.3.060 (Flag Drive Grades):

Hearn Submission to Planning Commission Record – PA-L-2026-00020.

Respectfully submitted,

Chris

Christian E. Hearn | OSB #911829

DAVIS HEARN ANDERSON & SELVIG, PC

515 E. Main St. | Ashland, Oregon 97520

phone: 541-482-3111 | fax: 541-488-4455

email: chearn@davishearn.com | web: www.davishearn.com

DAVIS HEARN
ANDERSON & SELVIG
ATTORNEYS AT LAW

JACK DAVIS
CHRISTIAN E. HEARN
EUGENE V. ANDERSON
RACHELE R. SELVIG
ANDREW M. NARUS

DAVIS HEARN ANDERSON
SELVIG & NARUS
ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION
ESTABLISHED 1953

515 EAST MAIN STREET
ASHLAND, OREGON 97520
(541) 482-3111 | www.davishearn.com

SAM B. DAVIS (1923-2017)
SIDNEY E. AINSWORTH (1927-2003)
DONALD M. PINNOCK - Retired
DANIEL L. HARRIS - Retired
DAVID V. GILSTRAP - Retired
SUSAN VOGEL SALADOFF - Retired
GARRISON F. TURNER - Retired

AUGUST 25, 2026

TO: Ashland Planning Commission (PC-public-testimony@ashland.or.us)

FROM: Chris Hearn (chearn@davishearn.com)

RE: Planning Action PA-L-2026-00020 - Draft Ordinance No. 3309 Amending
AMC 18.5.3.060 (Flag Drive Grades); Continued Hearing of August 25, 2026

Chair and Commissioners:

I submit this comment in support of the proposed amendments to AMC 18.5.3.060. By way of disclosure, this firm represents Bryan and Stephanie DeBoer, the owners of a lawful lot of record at 231 Granite Street created in 1995 with Planning Commission approval, and before the City adopted the Hillside Development Standards. The only feasible access to their legal lot is an existing shared driveway with a grade exceeding 18%. The DeBoers' pending land use matter and ensuing LUBA decision illustrates precisely the problem the draft ordinance is designed to solve, and I offer these comments from that vantage point.

1. Subsection F.3 should be adopted. As currently construed, AMC 18.5.3.060.F categorically bars any variance for a flag drive grade above 18% grade, no matter the circumstances. For the small set of lawful lots of record created with City approval before December 3, 1997 (fewer than 20 citywide, by staff's count), and whose legacy access already exceeds that grade, the current variance standard operates not as a development regulation but as an outright prohibition on any use of a lawfully created residential lot. A criteria-based variance path restores what the Hillside Standards were never intended to eliminate: the ability of these grandfathered lots to be developed at all. Staff's takings analysis is well taken, and the amendment also aligns the code with the City's obligations respecting housing production on residentially zoned land.

2. The optional hard cap of 25% in F.3 should be omitted; the variance criteria are the appropriate safeguard. The red-text option would trade one categorical bar for another. The lots F.3 addresses take access over legacy driveways whose grades are fixed facts of topography and history; a fixed numeric ceiling will

inevitably exclude some of the very lots the exception exists to relieve, recreating the no-relief problem the amendment is meant to fix. The genuine safeguards are already in the draft: the F.6 requirement of stamped engineering demonstrating that no conforming alignment can provide access and that the requested grade is the minimum necessary; the full AMC 18.5.5 variance criteria; and the F.5 requirement of a recommendation from the Fire Code Official in every case.

If the Commission nonetheless retains a numeric ceiling, the ordinance should specify that it is measured as the average grade of the flag drive rather than at any single point or section, so that short, engineered transitions do not disqualify an otherwise-approvable access.

3. The F.4 cumulative-length limitation should not apply categorically to F.3 lots. Many pre-1997 lots take access over existing shared driveways that already run well beyond 200 feet at grades above 15 percent. If F.4's 200-foot cumulative cap applies without relief to F.3 variances, a subset of grandfathered lots will remain unbuildable notwithstanding the new exception. That would again reproduce the categorical bar under a different subsection. I recommend either that F.4 apply only to F.2 (post-1997) variances, or that F.4 expressly permit the cumulative length for an F.3 lot to be addressed through the same variance, subject to the same F.5 and F.6 safeguards. At minimum, F.4 should count only newly constructed driveway sections against the 200-foot limit, not to a pre-existing legacy driveway the applicant did not create and cannot change.

4. Staff is correct that eligibility should run with the land. An ownership-continuity trigger would render a buildable lot unbuildable upon sale or inheritance, contrary to the settled Oregon practice that land use entitlements and nonconforming rights run with the land. Further, it would burden the City with chain-of-title administration while steadily shrinking the class of eligible lots toward zero. The Measure 37/49 experience counsels against ownership-date entitlements.

The amendment preserves the protective purpose of the Hillside Development Standards: nothing in it is self-executing, every application must satisfy the variance criteria based on stamped engineering plans, and fire-life-safety review remains independent. It simply ensures that a small class of lawfully created lots which have historically been included in the City's buildable lands inventory, are not consigned to permanent unbuildability by a standard adopted after their creation.

I urge the Commission to recommend approval to the City Council with the adjustments described in paragraphs 2 and 3.

Thank you for your consideration.

**Page -3-
Ashland Planning Commission
PA-L-2026-00020
August 25, 2026**

Respectfully submitted,
DAVIS HEARN ANDERSON & SELVIG, PC

A handwritten signature in blue ink, appearing to read 'CHEARN', with a horizontal line extending to the right.

Christian E. Hearn (OSB #911829)
chearn@davishearn.com

August 25, 2026

MEMORANDUM

TO: Ashland Planning Commission

FR: Jay Lininger

RE: **Proposed Ordinance 3309 (flag driveway grade) (PA-L-2026-00020)**

I believe the proposed ordinance amending the Ashland land use code is necessary because leaving the code as-is would create a new level of certainty that none of the 13 lots at issue will have reasonable access by private vehicles—let alone by fire apparatus—even though the lots were platted as abutting a public street.¹ The certainty of no access is new because, since 1997, the city granted variances to the current flag driveway grade standard reasoning that prior platted lots abutting public streets need reasonable access.²

Leaving the land use code unchanged could ripen a taking claim under the 14th Amendment in two scenarios: (1) if regulation causes total loss of viable economic use as in *Lucas*; or else (2) if regulation diminishes property value, but some viable use remains, as in *Penn Central*.³ Each scenario is fact-dependent, and neither one is a slam-dunk, but a *Lucas* scenario would be unfavorable to the city, and I believe we have a fiduciary duty to sidestep that landmine.

With the benefit of time for study, I now realize that a variance procedure must treat all of the similarly situated lots platted before December 3, 1997, the same regardless of the vintage of

¹ See *State ex. rel. Dept. Transp. v. Alderwoods*, 358 Or. 501 (2015) (stating rule that easement appurtenant for limited purpose of reasonable access attaches to fee title of real estate property abutting public road).

² Staff Report, PA-L-2026-00020, Aug. 11, 2026, p. 1.

³ See *Lucas v. So. Carolina Coastal Council*, 505 U.S. 1003 (1992) (taking results from land use regulation causing total loss of viable economic use); *Penn Central v. City of New York*, 438 U.S. 104 (1978) (taking claim of diminished property value, without total loss of economic use, subject to three-factor test); *Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001) (stating a “landowner may not establish a taking before a land-use authority has the opportunity, using its own reasonable procedures, to decide and explain the reach of a challenged regulation.”).

The “*Nollan/Dolan*” precedents cited by the Assistant City Attorney at the August 11, 2026, business meeting are inapposite to proposed Ordinance 3309 because the ordinance would not interfere with the property right of exclusive use by exacting a condition of public use (e.g., easement for access or infrastructure) in exchange for approval of a development permit application. See *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Nollan v. Cal. Coastal Com’n*, 483 U.S. 825 (1987); also see *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 302, 323-24 (2002) (distinguishing physical takings from regulatory takings); *Lingle v. Chevron USA*, 544 U.S. 528 (2005) (elucidating four scenarios of property taking subject to compensation).

estate on each lot. The common law of property in Oregon establishes a right of reasonable access to any lot abutting a public road in the form of an easement appurtenant that runs with fee title to any grantee.⁴ Local land use regulation may condition development of the easement for community welfare, but it cannot *extinguish* the easement without liability for taking.⁵

Moreover, distinguishing the lots at issue by establishment of current estate would not protect the city from taking claims because the U.S. Supreme Court held that one state's identical distinction unconstitutionally limited the Takings Clause such that no remedy for government taking of property by land use regulation would be available property owners with the passage of time.⁶ Therefore, I agree with the conclusion of today's Staff Report regarding "**ownership trigger**," for some of the reasons stated in the report, and for the reasons stated above.⁷

Given that the city must codify a variance procedure for flag driveway grade on lots platted before December 3, 1997, in order to protect taxpayers from liability for taking private property, what should the approval criteria include?

I will ask staff to clarify whether the variance approval criteria of **AMC 18.5.5.050** automatically apply the limit of 100-foot cumulative length of new driveway on slopes greater than 35 percent stated in **AMC 18.3.10.090.A.3.b**. If the variance approval criteria do not apply that limit on driveway grade, then I will move to amend the proposed ordinance to clarify in **subsection F.4** that the limit stated in **AMC 18.3.10.090.A.3.b** will apply to the lots described in **subsection F.3**. Application of the hard ceiling stated in the Development Standards for Hillside Lands will ensure implementation of the goals and policies of the Comprehensive Plan.

⁴ *Alderwoods*, 358 Or. at 511-13.

⁵ *Id.*, 522; *accord Palazzolo*, 533 U.S. at 627 ("The right to improve property ... is subject to the reasonable exercise of state authority, including the enforcement of valid zoning and land-use restrictions.").

⁶ *Id.*, 627-28 ("A blanket rule that purchasers with notice have no compensation right when a claim becomes ripe is too blunt an instrument to accord with the duty to compensate for what is taken."); *accord U.S. v Dickinson*, 331 U.S. 745, 748-49 (1947) (holding statute of limitation did not preclude taking claim of owner whose estate post-dated notice of government intent to drown property).

⁷ Staff Report, PA-L-2026-00020, Aug. 25, 2026, p. 3.

Public testimony asserting that landowners of newer vintage knew, or should have known, about the current flag driveway grade standard offered a facially plausible argument to apply **ORS 195.305(3)** to the proposed ordinance. However, the argument probably would not survive judicial review of a taking claim under the federal constitution subject to the *Palazzolo* and *Dickinson* precedents cited above.



Flag Drive Grade Variances

Ordinance #3309

Planning Commission
August 25, 2026 Cont'd Hearing

Why is an Amendment Needed?

1997

Ashland adopted the Hillside Development Standards through Ordinance #2808.

Current code

New flag drives: 15% maximum; variance up to 18%.

The gap

Some pre-1997 lots cannot reach a buildable area without exceeding 18% because of topography.

Planning Commission considered & rejected staff's initial recommended language at the August 11th meeting and continued the hearing to August 25th to further discuss and deliberate. Previous Commission discussion included:

- Ordinance language needs to better distinguish between pre-Hillside Ordinance and post-Hillside Ordinance lots for clarity and readability.
- Whether to include an upper limit on driveway grade variances for pre-Hillside Ordinance lots that cannot otherwise meet the standard.
- Clarifying the variance consideration in the standard, versus relying on the variance criteria in AMC 18.5.5.
- Whether relief from the driveway grade standards should be dependent on when the property was purchased, and what the driveway grade standard was at the time of purchase. (Seven of 13 lots have changed hands since 1997.)



Staff Recommended New Language (AMC 18.5.3.060.F)

F. Flag drive grades.

1. **General standard.** Flag drive grades shall not exceed a maximum grade of 15 percent.
2. **Exception for lots created after the Hillside Development Standards.** For a flag drive serving a lot created on or after the effective date of the Hillside Development Standards, Ordinance No. 2808, adopted December 3, 1997, including a lot created through a flag lot partition, a variance may be granted for a grade in excess of 15 percent but no greater than 18 percent.
3. **Exception for lots of record predating the Hillside Development Standards.** For a flag drive serving a legal lot of record created before the effective date of the Hillside Development Standards, Ordinance No. 2808, adopted December 3, 1997, a variance may be granted for a grade in excess of 15 percent [- option - , but no greater than 25 percent].
4. **Cumulative length limitation.** The cumulative length of all sections of a flag drive exceeding 15 percent grade approved through a variance under subsection F.2 or F.3 shall not exceed 200 feet.
5. **Fire Code compliance.** A flag drive approved under a variance granted under subsection F.2 or F.3 remains subject to the fire apparatus access requirements of the Oregon Fire Code, including any approval required by the Fire Code Official.



Staff Recommended New Language

F. Flag drive grades.

6. **Variance criteria.** A variance under subsection F.2 or F.3 shall meet the criteria for approval in chapter 18.5.5, Variances. Circumstances supporting a variance under this subsection include, but are not limited to, a demonstration based on stamped engineer's drawings that no alignment meeting the general 15 percent grade standard of this subsection can provide vehicular access to a buildable area of the lot, or that a steeper alignment would better avoid or reduce impacts to natural or physical features of the site, such as water resource protection zones, trees, rock outcroppings, or areas best left in an undisturbed natural state. In evaluating a variance under this subsection, the approval authority may consider unique or unusual site conditions, including topographic constraints, access limitations, and the avoidance or reduction of impacts to natural and physical features, in determining whether the requested grade is the minimum necessary to reasonably develop the lot while minimizing site disturbance. The Fire Code Official shall make a recommendation on each variance application regarding fire apparatus access and fire and life safety, and the recommendation shall be considered by the approval authority.





Planning Action PA-L-2026-00020

At the August 11th meeting, Planning Commissioners discussed the possibility of limiting a steep-grade exception only to lots that have remained under the same ownership since the Hillside Ordinance took effect in 1997. In staff research into Jackson County records, seven of the 13 lots identified as potential candidates for driveway grade variances have changed hands since the ordinance change in 1997.

In staff's assessment, the problem with such an approach is that land use rights and limits in Oregon almost always run with the land, not with a particular owner. Grandfathered and nonconforming use rights transfer to new owners for exactly that reason.

Were relief from the driveway grade standard to be conditioned upon continuous ownership, a lot that its 1997 owner could build on today would become unbuildable the day it is sold or inherited, which recreates the same no-relief problem the exception is meant to fix and pushes it onto buyers and heirs who had nothing to do with when the lot was created. This would raise the city's takings exposure rather than lowering it, and it would be difficult to administer since staff would need to track chain of title as an eligibility question, with the pool of qualifying lots shrinking over time until none were left.



Planning Action PA-L-2026-00020

Measure 37 tried to do something similar by making relief turn on when an owner acquired their property. It was essentially an ownership-date entitlement, and it created enough legal and administrative problems that the voters had to pass Measure 49 a few years later to rein it in and put the focus back on the land and clear standards.

For staff, that history is a useful caution to keep in mind. The fairness argument for favoring longtime owners over someone who bought a steep lot knowing its limits is a real point the Commission can weigh, but it runs against the overwhelming practice in Oregon land use, and staff's recommendation is that the entitlement should run with the land so we are not creating unbuildable lots with no path to relief for future owners.

Staff Suggested Motion

“I move that the Planning Commission recommend that the City Council approve first reading of Ordinance No. 3309, titled ‘AN ORDINANCE RELATING TO VARIANCES FOR FLAG DRIVE AND DRIVEWAY GRADES SERVING LEGAL LOTS OF RECORD CREATED PRIOR TO THE ADOPTION OF THE HILLSIDE DEVELOPMENT STANDARDS; AMENDING AMC 18.5.3.060’, as amended in the August 25th staff report.”

Note: Planning Commission recommendations on this item are scheduled to be considered by the City Council at a Public Hearing and First Reading on **October 6th, 2026.**

