

# Original Text

Section 375-5(E)(14)(iii)

## (iii) Waivers

- A. An applicant may request, in writing, a waiver or modification of any of the development plan review development standards.
  
- B. The Planning Board reserves the right to waive or otherwise modify such standards upon a finding that such action is necessary to eliminate practical difficulties associated with strict interpretation of these provisions and that the result will not violate the spirit and intent of these provisions. Such request shall set forth the specific relief sought and the reasons the same are necessary.

Section 375-5(E)(1)(C)

## c) **REVIEW CRITERIA**

An application for a Building Permit shall be approved only if the Chief Building Official determines that it is consistent with the adopted Building Code, any provisions of this USDO, and the Albany City Code.

**Council Member Hoey introduced the following:**

**Ordinance Number 15.81.19 (as Amended 01/29/2020)**

**AN ORDINANCE AMENDING CHAPTER 375 OF THE CODE OF THE CITY OF ALBANY (UNIFIED SUSTAINABLE DEVELOPMENT ORDINANCE) BY REPEALING SUBDIVISION III (WAIVERS) OF SUBSECTION (b) (PROCEDURE) OF SECTION 375-5(E)(14) (MAJOR DEVELOPMENT PLAN REVIEW) AND REQUIRING THAT ANY PERMIT FOR THE PURPOSES OF DEMOLITION OR BUILDING BE APPROVED ONLY IF ALL RELEVANT PRIOR APPROVALS OR CONDITIONS BY CITY, COUNTY, STATE OR FEDERAL DEPARTMENTS OR AGENCIES ARE MET**

*The City of Albany, in Common Council convened, does hereby ordain and enact:*

**Section 1.** Subdivision iii (Waivers) of subsection (b) (Procedure) of section 375-5(E)(14) (Major Development Plan Review) of Chapter 375 of the Code of the City of Albany (Unified Sustainable Development Ordinance) is hereby repealed.

**Section 2.** Subsection (c) (Review Criteria) of section 375-5(E)(1) (Building Permit) of Chapter 375 (Unified Sustainable Development Ordinance) is amended to read as follows:

(c) Review Criteria

An application for a Building Permit shall be approved only if the Chief Building Official determines that it is consistent with the adopted Building Code, Uniform Fire Code, any provisions of the USDO, and the Albany City Code. No permit shall be issued unless all relevant prior approvals or conditions required and imposed by City, County, State or Federal agencies or departments prior to building are met. No waiver or alteration of such condition may be made by the Chief Planning Official and Chief Building Official.

**Section 3.** Subsection (c) (Review Criteria) of section 375-5(E)(17) (Demolition Permit) of Chapter 375 (Unified Sustainable Development Ordinance) is amended to read as follows:

(xiv) Whether any prior approval or condition has been imposed by a City, County, State or Federal agency or department which requires such approval or condition be met prior to any permit being issued in relation to the demolition of any proposed building or structure.

**Section 4.** This ordinance shall take effect immediately

## **Memorandum of Support**

**Ordinance Number:** 15.81.19 (as Amended 01/29/2020)

**Sponsor(s):** Council Member Hoey

**Title:** AN ORDINANCE AMENDING CHAPTER 375 OF THE CODE OF THE CITY OF ALBANY (UNIFIED SUSTAINABLE DEVELOPMENT ORDINANCE) BY REPEALING SUBDIVISION III (WAIVERS) OF SUBSECTION (b) (PROCEDURE) OF SECTION 375-5(E)(14) (MAJOR DEVELOPMENT PLAN REVIEW) AND REQUIRING THAT ANY PERMIT FOR THE PURPOSES OF DEMOLITION OR BUILDING BE APPROVED ONLY IF ALL RELEVANT PRIOR APPROVALS OR CONDITIONS BY CITY, COUNTY, STATE OR FEDERAL DEPARTMENTS OR AGENCIES ARE MET

**Purpose:** To amend the Unified Development Ordinance of the City of Albany to ensure that no building permit or demolition permit is issued prior to any condition precedent set by a City, County, State or Federal agency or department, is met. This legislation also seeks to remove the waiver provision of the Unified Development Ordinance pertaining to Major Development Plan Review.

### **Summary:**

Section 1 repeals subdivision III (Waivers) of subsection (b) (Procedure) of section 375-5(E)(14) (Major Development Plan Review) of Chapter 375 of the Code of the City of Albany (Unified Sustainable Development Ordinance) to remove the waiver provision.

Section 2 amends subsection (c) (Review Criteria) of section 375-5(E)(1) (Building Permit) of Chapter 375 (Unified Sustainable Development Ordinance) to ensure that any condition placed on a proposed development, being required by the issuing agency or department, is to be carried out prior to ground breaking or construction and before a building permit is issued.

Section 3 amends subsection (c) (Review Criteria) of section 375-5(E)(17) (Demolition Permit) of Chapter 375 (Unified Sustainable Development Ordinance) to ensure that any condition placed on a proposed development that is required by the issuing agency or department, is carried out prior to ground breaking or construction and before a demolition permit is issued.

Section 4 sets the effective date

**Justification:** The Unified Sustainable Development Ordinance (USDO) is the blueprint to our community's current regulations on zoning and development within the City of Albany. By utilizing this ordinance a resident, a landowner, or a developer can determine what regulations must be met in order to legally carry out their desired wishes and it is the goal of the Common Council to ensure that this document is fully transparent and workable for all entities that rely upon it for its legal significance and guidance. Courts have held that a zoning regulation is permissible if it is reasonable and not arbitrary; if it bears a substantial relation to the public health, safety, comfort, and general welfare; and if the means employed are reasonably necessary for the accomplishment of its purpose.

This legislation seeks to amend the USDO in a manner that would reduce ambiguity in what is and what is not required of landowners, developers and residents, by removing the waiver clause that currently allows for the Planning Board to grant a waiver of the provisions laid out within the USDO, if the Planning Board deems the provisions to cause “practical difficulties” to the carrying out of an application for “Major Development.” What may or may not be deemed a “practical difficulty” is undeterminable as it stands currently and is set on a case by case basis. The concern is that the USDO permits waivers to be granted without clearly outlining what specific situations rise to the level of a “practical difficulty” and the vague nature of this language can lead to misunderstandings and a lack of transparency.

Secondly, the amendments made herein pertaining to the granting of a Building Permit, as well as a Demolition Permit, are aimed at strengthening the USDO’s goal in ensuring the protection of the public’s health, safety, comfort and general welfare. There are times when a City, County, State or Federal agency or department has specific conditions that they need to see met before they can approve a proposed design, build or demolition. The stipulations and conditions are often handed down to ensure such things as fire code, occupancy limits, water, sewer and other environmental impacts are accounted for and the amended language makes clear that such needs are carried out before any permit is granted. Granting of a permit prematurely could lead to an unintended consequence that has the potential to harm the public’s health, safety, comfort and general welfare.