



TO: Lake Oswego Planning Commission

FROM: Leslie Hamilton, Senior Planner

SUBJECT: Annual Maintenance Code Amendments – Work Session # 2
(LU 18-0007/PP 17-0006)

DATE: February 1, 2018 **WORK SESSION DATE:** February 12, 2018

On February 12, 2018, the Planning Commission (Commission) will conduct a work session for proposed amendments to the Community Development Code (Chapter 50). This package is referred to as the Annual Code Amendments, and includes amendments that correct cross references and clarify existing standards, in addition to a number of policy amendments. These amendments were the subject of an earlier work session by the Commission on September 11, 2017.

A draft of the proposed amendments was available for public review and comment between December 11 and January 12, 2018. No direct comments from the public were received on this draft.

The purpose of the work session is for the Commission to become familiar with the amendments and to ask questions prior to conducting a public hearing on March 12, 2018. This report summarizes the more substantive code amendments (Key Policy Items). The full text of the proposed amendments is included in Attachment A; staff directs the Commission to Attachment B, the Planning Commission memo dated August 31, 2017, for an analysis of all the proposed amendments.

KEY POLICY ITEMS

The Policy amendments include the following:

- Item 8:** **Setback Determination on Through Lots [LOC 50.04.003.6.b], page 12 in Attachment A:** “Through Lots” are lots that have frontage on more than one street. This section, under Special Determination of Yards, requires a front yard setback along all street frontages unless there is a prevailing front yard pattern that indicates otherwise. In determining the prevailing yard pattern, the text

Item 13: **Tree Mitigation in Lake Grove Village Center Overlay [LOC 50.05.007.6.e.ix(1)],** pages 23 and 25 in Attachment A: Tree mitigation in the LGVCO escalates quickly because trees must be mitigated (either planted on site or a fee paid to the City) based on the total diameter inches removed. For example, removing one 27” tree in the LGVC Overlay requires either (1) nine 3-inch caliper trees to be planted on site, or (2) a mitigation fee of \$1,215 (\$135 per tree) paid into the Tree Fund (mitigation fees go into a Tree Fund for tree planting and habitat conservation projects citywide.) A pending land use case in the LGVCO requests the removal of eight trees with a cumulative diameter of 193 inches; this translates into 64 mitigation trees. Because the site is only large enough to accommodate seven mitigation trees on site, the remaining 57 trees must be mitigated through Tree Fund payments, which would total \$7,695. Elsewhere in the City, the mitigation rate is 1:1 per tree, and the Tree Fund fee for one tree is \$135.

Staff reviewed the legislative history of the LGVCO and could find no specific reference to the reasoning behind the 1”: 1” mitigation rate [LU 06-0025]; it was likely an additional deterrent to removing mature trees, or an opportunity to replace lost canopy at an accelerated rate. Staff requests direction from the Commission on whether to (1) maintain the mitigation rate based on diameter inches lost, (2) reduce the rate to something less than a 1:1 ratio, or (3) use the 1:1 tree replacement rate that is standard in all other parts of the City. No comments were received on this item during the Public Review Draft circulation.

Item 20: **Subdivision Standards “Lock-in” Provision [LOC 50.07.007],** pages 34-36 in Attachment A: Per ORS 92.040(2), Application for Approval of Subdivision or Partition, holders of subdivision approvals may elect to develop under the development standards that were in effect when their project was applied for. The affected standards include not just lot dimensional standards, but all land use regulations. *Bend Athletic Club v. City of Bend*, 239 Or. App. 89 (2010)(access to arterial street “locked-in”). Per subsection (3), it is incumbent on the local jurisdiction to establish the duration that the standard would be locked in; otherwise, the standards are locked in for 10 years. The Code previously had a lock-in period of one year for certain standards, but that provision was removed because at that time subdivisions were reviewed as Planned Developments, which locked in the subject standards in perpetuity.

Staff proposes a lock-in period of three years, which is consistent with the expiration of other development approvals, i.e., CUPs, DRs and PDs. Relatedly, staff recommends codifying a three-year window for plat recordation. Currently, an applicant must submit a plat to the City within one year of land division approval, but there is no time limit for actually recording the plat. No comments were received on this item during the Public Review Draft circulation.

Item 21: General Design Variance Criteria [LOC 50.08.003.3.a.ii] and Residential Zone “Purpose” Statements [LOC 50.02.001], pages 2-4 in Attachment A: The General Design Variance Criteria require that the design “better accomplish the purposes, goals or objectives of the base district.” The R-DD and R-6 zones have detailed purpose statements, which include goals and objectives; these zones also have specific neighborhood plans that likely helped shape these purposes statements. However, for the R-5, R-7.5, R-10 and R-15 zones, there is no stated purpose beyond providing housing at certain densities.

At the first Work Session, Planning Commission requested staff to proceed with developing Purpose Statements for these zones, but gave no specific direction on parameters. Because these zones are scattered throughout the City, in a variety of environments and contexts – hilly, flat, non-conforming size (Hallinan), deep (Lake Forest), etc. - developing purpose statements to fit all contexts is difficult. Staff identified three options for proceeding:

Option 1: Include this issue with Planning Commission’s 2018 project to review the RID Procedures.

Option 2: Make an exception for applicability of this criteria when a zone does not have a purpose statement.

Option 3: Identify the “purpose” of the various dimensional standards that can be affected by RID (setbacks, setback planes, lot coverage, etc.).

Staff recommends Option 1, as the 2018 project will likely be a comprehensive review of RID; this item is only a small part of the RID criteria. No comments were received on this item during the Public Review Draft circulation.

Item 22: General Design Variance Criteria [LOC 50.08.003.3.b.i], pages 36-37 in Attachment A: During its review of the Downtown Redevelopment Design (DRD) District Variance Criteria (LU 17-0039), the Planning Commission recommended that staff “flag” LOC 50.08.003.3.b for a potential future amendment that would make subsections ‘a’ and ‘b’ applicable to design variances citywide. In the DRD District, as amended in LU 17-0039, these provisions require the applicant for a design variance to demonstrate that the proposal has, a) “exceptional ... quality [of] detailing, appearance and materials” and b) “positive unique relationships to nearby structures, views or open space, and streetscapes.” For design variances outside the DRD District (as amended) the code provides a choice between ‘a’ and ‘b’. The Commission’s intent is to provide a higher standard that addresses both design quality and nearby structures.

Staff recommends, like Item 21, that this item be reviewed in the 2018 project to review the RID Procedures comprehensively, as these criteria apply to all RID

requests. No comments were received on this item during the Public Review Draft circulation.

Item 24: **Floor Area [LOC 50.10.003], pages 39-40 in Attachment A:** The Floor Area standard, in conjunction with the Height standard, is intended to control the overall volume of a structure; with the exception of R-DD, R-W, MC, CR&D, HC, GC and the WLG zones, the remaining 16 zones have standards for maximum floor area. Floor Area can generally be described as enclosed living space, although garages are counted toward floor area in residential developments in the R-5, R-6, R-7.5, R-10 and R-15 zones. Courtyards, patios and decks, which are excluded from the definition of Floor Area, can make a house appear larger, especially when partially enclosed.

The Floor Area standard was codified in 2003. Starting from around 2008, staff has inconsistently applied an interpretation to single family dwellings that covered areas surrounded on three sides by walls count to Floor Area, regardless of whether there is an exterior door or not [staff clearly did not consider these areas “courtyards”, which are defined in the CDC and specifically excluded from Floor Area]. This interpretation was challenged in review of BP 499-16-05233, a single-family dwelling in First Addition, and the covered rear porch, which was enclosed by walls on three sides, was not included in Floor Area.

Staff requests direction from the Commission regarding an approach for codifying one of the interpretations. The impact of codifying a more inclusive definition of Floor Area is two-fold: (1) it may create many non-conformities to Floor Area, as partially enclosed patios, decks and courtyards were not counted to Floor Area for many commercial or multi-family developments, or for single-family dwellings prior to circa 2008, when staff first applied the stricter interpretation; and (2) counting these areas to Floor Area potentially limits development size, and a Measure 56 notice will be required to be mailed City-wide to all property owners.

Staff received comments on Floor Area from a Development Review Commission (DRC) member. The DRC member recommended that exterior stairs, whether covered or uncovered, that serve space above a garage or accessory structure should be counted toward Floor Area; the reasoning behind including exterior stairs is the fact that if the stairs were interior to the structure, they would be counted to Floor Area [Note: the current definition of Floor Area explicitly excludes exit stairs]. The Commissioner also recommended that “conditioned” space be a criteria for determining what counts toward Floor Area. As explained above, the Floor Area standard can generally be described as measuring enclosed living space, i.e., conditioned space.

Relevant Definitions from LOC 50.10.003

Floor Area: The gross building floor area excluding:

- a. Attic (the unfinished space between the ceiling joists of the top story and the roof rafters);
- b. Vent shafts;
- c. Courtyards;
- d. Garages, except as modified in:
 - i. The R-5 zone (LOC 50.04.001.2.d.i(1), for residential development);
 - ii. The R-6 zone (LOC 50.04.001.2.d.i(1), for outright permitted residential development);
 - iii. The R-7.5, R-10, and R-15 zones (LOC 50.04.001.1.d.i(1), for single-family dwellings);
- e. Allowable projections;
- f. Decks;
- g. Patios;
- h. Uncovered exit stairs; and
- i. Uncovered, above-grade driveways.

Courtyard: An open space surrounded or mostly surrounded by walls or buildings. Commercial courtyards shall consist of some textured materials or pavers and shall contain one or more of the following elements: landscaping, fountain, arbor, or outdoor furniture.

Deck: A non-enclosed platform (excluding above-grade entry walkways) constructed on or above the ground, used for several purposes, including leisure, social gatherings, etc.

Patio: An impervious surface on the ground, excluding parking areas and pathways of five ft. or less in width, used for several purposes, including leisure, social gatherings, etc.

Attachments

Attachment A: Proposed Text Amendments, 01/30/18

Attachment B: Planning Commission Memo, dated 08/31/17 (without referenced attachment)

50.01.004 ZONING DESIGNATIONS, BOUNDARIES, MAPS, AND ANNEXATION

1. ZONING DISTRICTS

The City is divided into the following zoning designations:

TABLE 50.01.004-1: Zoning Designations	
Zone District Category	Map Designation
Residential	
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Overlay Districts – Area Specific	
Glenmorrie R-15 Overlay District	GO
Evergreen R-7.5 Overlay District	EO
Lake Grove R-7.5/R-10 Overlay District	LGO
Downtown Redevelopment Design District	DRD
West Lake Grove Design District	WLG
Old Town Neighborhood Design	OTN
Lake Grove Village Center Overlay District	LGVCO
Southwest Overlay District	SWO
Overlay Districts – Resource Specific	
Greenway Management Overlay District	GM
Sensitive Lands Overlay	
Resource Conservation (Tree Groves)	RC
Resource Protection (Streams and Wetlands)	RP
Habitat Benefit Area (Tree Groves)	HBA
Flood Management Area	FMA
Item 1 (M): Add reference to SW Overlay District	

50.02.001 RESIDENTIAL DISTRICTS

1. RESIDENTIAL-LOW DENSITY ZONES

a. Districts

The residential-low density zone districts are R-15, R-10, and R-7.5.

b. Purpose

To provide lands for single-family residential development with densities ranging from two to five dwelling units per gross acre.

2. RESIDENTIAL-MEDIUM DENSITY ZONES

a. Districts

The residential-medium density zone districts are R-6, R-5, and R-DD.

b. Purpose

i. R-5

To provide lands for single- and multi-family residential development with densities ranging from seven to eight dwelling units per gross acre.

ii. R-DD Zone

(1) The purpose of the R-DD zone is to assure that single-family homes are protected from noise, light, glare and reduction in privacy to the maximum extent possible during the area's transition to higher density residential use, to facilitate good architectural design and site planning which maintains residential choices of unit size, cost and other amenities and supports the economic feasibility of new construction and development, and to assure protection and compatibility of all land uses, including commercial, residential, park, open space and historic sites.

(2) The R-DD zone is intended for use in low density residential districts which are undergoing transition to increased densities, and which have scenic, historic, natural or residential features which should be preserved and integrated with new development.

iii. R-6 Zone

The FAN R-6 zone is intended to implement the land use policies of the First Addition Neighborhood Plan. The purpose of this zone is to ensure the design quality of proposed development in the neighborhood by:

- (1)** Ensuring that proposed building designs are visually compatible with the character of existing structures, maintain adequate light and air between structures, and complement the neighborhood's architectural character.
- (2)** Minimizing the visual impact of garages from the street, and to continue established alley uses and functions such as access to garages, off-street parking and trash removal.
- (3)** Encouraging compatible and sensitive remodeling and renovation of existing residences.
- (4)** Preserving the small-town character of the existing streetscape by allowing single-family development that is human scale and pedestrian oriented.
- (5)** Enhancing the natural environment of the neighborhood as one of the dominant characteristics.
- (6)** Preserving FAN's historical and architectural character by encouraging infill development that is compatible in design character to landmark structures on abutting lots.

Item 21 (P): The General Design Variance Criteria require that the alternative design “better accomplish the purposes, goals or objectives of the base district” [50.08.003.3.a.ii – see below]. None of the base districts have stated “goals or objectives.” As shown above, R-DD and R-6 have well-defined purpose statements, but R-5, R-7.5, R-10 and R-15 do not; R-DD and R-6 also have specific neighborhood plans that probably helped shape these purpose statements. The Dimensional and Dwelling Design Standards for these zones DO NOT include purpose statements either.

Planning Commission requested staff to proceed with developing Purpose Statements, but gave no specific direction as to parameters. Unlike R-DD and R-6, these zones are scattered throughout the City, in a variety of environments and contexts – hilly, flat, non-conforming size (Hallinan), deep (Lake Forest), etc. The amendments relates to PC’s reserve list of project goals that includes reviewing RID procedure for its effectiveness in protecting/enhancing neighborhood character. Staff requests direction from the Commission on this item:

Option 1: Tackle with Commission’s Reserve List, RID neighborhood character. In the meantime, applicants are challenged in applying this criterion to a design variance request.

Option 2: Make an exception when zone does not have a purpose statement.

Option 3: Identify “purpose” of the various dimensional standards that can be affected by RID (setback, setback plane, etc.)

3. GENERAL DESIGN VARIANCE CRITERIA

The reviewing authority shall only approve a design variance if it determines that the following criteria have been met:

a. The applicant demonstrates that:

- i. Compliance with the applicable standard is not practicable due to the physical characteristics of the site or existing structure; or
- ii. An alternative design will better accomplish the purposes, goals, or objectives of the base district and any adopted plan or overlay district applicable to the property.

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50.03.002 USE TABLE

1. HOW TO USE

a. Permitted Uses

A "P" in a cell of a use table indicates that the land use is allowed by right in that base or overlay zone, subject to compliance with the use-specific standards referenced in the final column of the use table. Permitted uses are subject to all other applicable requirements of this Code, including those set forth in LOC 50.06, Development Standards. Uses accessory to a permitted use are allowed regardless of whether they are listed separately in the use table.

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3. COMMERCIAL, MIXED USE, INDUSTRIAL, AND SPECIAL PURPOSE DISTRICTS USE TABLE

TABLE 50.03.002-2: COMMERCIAL, MIXED USE, INDUSTRIAL AND SPECIAL PURPOSE DISTRICTS USE TABLE																		
P = Permitted Use Blank = Not Permitted C = Conditional Use A = Accessory Use																		
[x] Table notes located at the end of the table																		
Use Category	Use Type	Commercial, Mixed Use, Industrial											Special Purpose			Use-Specific Standards		
		NC [8], [9]	GC	HC [9]	OC [8], [1]	EC [8]	CR&D	MC	WLG [4] OC RM R-2.5			FM U [4], [7]	I	IP [5]	C I		PF [3], [1]	PN A
RESIDENTIAL USES																		
////////////////////																		
PUBLIC, INSTITUTIONAL, AND CIVIC USES																		
																		50.03.003.5
Community and Cultural Facility	Cemetery															C		
	Community garden	P/C [10]																50.03.003.6.j
	Community institutions	P [10]	P	P	P	P	P	P				P		[5]	P			50.03.003.5.a
Day Care	Day care centers	P	P	P	P	P	P	P	P			P						50.03.003.5.f
	Certified or registered family child care home	P	P	P	P	P	P	P	P	P	P	P	P	P				
Education	Educational institutions, private	C	P			P			P			P			P			50.03.003.5.f
Health Care Facilities	Ambulance services	P	P			P								P	P			
	Hospitals		P [10]			P												
	Medical and dental clinic or laboratory	P	P	P	P	P	P	P	P	P		P	P	P				50.03.003.6.n

TABLE 50.03.002-2: COMMERCIAL, MIXED USE, INDUSTRIAL AND SPECIAL PURPOSE DISTRICTS USE TABLE

P = Permitted Use | Blank = Not Permitted | C = Conditional Use | A = Accessory Use

[x] Table notes located at the end of the table

Use Category	Use Type	Commercial, Mixed Use, Industrial												Special Purpose			Use-Specific Standards	
		NC [8] [9]	GC	HC [9]	OC [8] [1]	EC [8]	CR& D	MC	WLG [4]			FM U [4], [7]	I	IP [5]	C I	PF [3] [1]		PN A
									OC	RM U	R- 2- 5							
Public Facilities/Utiliti es	Major	C	P	P	P	P	P	P	C	C	C	P	P	P	C	C	P/C	50.03.003.5.c, 50.03.003.5.d
	Minor	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	50.03.003.5.b, 50.03.003.5.d
	Telecommunication s facilities, new								C	C	C					C	C	50.03.003.5.g
	Telecommunication s facilities, collocated	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	50.03.003.5.g
COMMERCIAL USES												[6]						50.03.003.6
////////////////////																		
		<p>[1] At a net site density of 2,500 sq. ft./lot area per unit area allowed in conjunction with office uses in the same building.</p> <p>[2] Attached townhomes only.</p> <p>[3] Wholly conducted within an enclosed structure.</p> <p>[4] No drive-through businesses are allowed in the West Lake Grove Design District or FMU zone.</p> <p>[5] In the portion of the IP zone depicted on Figure 50.03.003-B, additional permitted uses are: community institution, personal services, commercial recreational facility < 5,000 sq. ft. gross floor area, and retail ≤ 35,000 sq. ft. gross floor area subject to use-specific limitations in LOC 50.03.003.6. Additional conditional uses are: Pet day care partially conducted outside during daytime hours.</p> <p>[6] Outright permitted use if the gross floor area and exterior display area is 5,000 sq. ft. or less; conditional use if the gross floor area and exterior display is more than 5,000 sq. ft.</p> <p>[7] FMU uses allowed only if the primary building on site was constructed after January 17, 2013.</p> <p>[8] If lot has multiple zones, e.g., R-0/EC, see LOC 50.02.002.2.e.</p> <p>[9] Site-specific use limitations, see LOC 50.02.002.2.c.</p> <p>[10] In the GC-zoned area in the vicinity of Jean Way and Boones Ferry Road, as depicted on Figure 50.03.003-C, the following uses are not permitted: residential, congregate housing, community institution, residential care housing, community garden, hospitals, mortuaries, bars, drive-through</p>																

TABLE 50.03.002-2: COMMERCIAL, MIXED USE, INDUSTRIAL AND SPECIAL PURPOSE DISTRICTS USE TABLE																
P = Permitted Use Blank = Not Permitted C = Conditional Use A = Accessory Use																
[x] Table notes located at the end of the table																
Use Category	Use Type	Commercial, Mixed Use, Industrial											Special Purpose			Use-Specific Standards
		NC [8] [9]	GC	HC [9]	O C [8] 1	EC [8]	CR& D	M C	WLG [4]			FM U [4], [7]	I	IP [5]	C I	
		restaurants, hotels, commercial recreational facilities, theaters, auto and light vehicle rental and sales, auto service station, car wash, and parking facilities (primary use). Editor’s note: Italicized text is added for reader’s convenience. It will be proposed for adoption in a future code update.														

Item 2 (M): Adds a “P” in PNA zone for Major Public Facilities because there are both “Permitted” and “Conditional” uses allowed in Parks (a Major Public Facility). Adds a cross reference to the use-specific standard, which clarifies that uses authorized under a Parks Master Plan are permitted uses..

Item 3 (M): Makes entry under Day Care consistent with Residential Use Table re: Family Day Care homes. The Commercial Code Streamlining amendments added definitions to fix the problem previously identified as Item 3 (Family Day Care and Preschools); this is a clean-up amendment for consistency.

50.03.003 USE-SPECIFIC STANDARDS

1. RESIDENTIAL

5. STANDARDS FOR PUBLIC, INSTITUTIONAL AND CIVIC USES

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c. Major Public Facilities and Institutional Uses Not Covered by Other Specific Standards

- i. Utilities, streets or other necessary improvements to the public facility or institutional use shall be provided by the agency constructing the use.
- ii. When located in a residential zone, access should be located on a collector street if practical. If access is to a local residential street, consideration of a request shall include an analysis of the projected average daily trips to be generated by the proposed use and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the use. A traffic study will be required of the applicant to identify the

projected average daily trips to be generated and their distribution pattern. Uses which are estimated to generate fewer than 20 trips per week shall be exempted from the requirements of this subsection.

- iii. When located in a residential zone, lot area shall be sufficient to allow required yards which are at least two-thirds the height of the principal structure.
- iv. The height limitation of a zone may be exceeded to a maximum height of 50 ft.
- v. Noise generating equipment shall be sound buffered when adjacent to residential areas.
- vi. Lighting shall be designed to avoid glare on adjacent residential uses.
- vii. Levels of operations shall be adjusted to avoid conflict with adjacent uses where practical.

d. Park, Public

- i. Parks are a permitted use in the PNA zone, except activities defined as ‘major park improvements’ shall be allowed by conditional use only.
- ii. [Uses authorized under a Parks Master Plan are permitted uses.](#)

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Item 2 (M): Inadvertent Commercial Code Streamlining fix: Adds a use-specific standard for permitted parks activities.

50.03.005 TEMPORARY STRUCTURES AND USES

Temporary structures and uses are permitted only as follows:

5. IN COMMERCIAL, INDUSTRIAL, AND PF/PNA ZONES

The following temporary uses are permitted in commercial, industrial, and PF/PNA zones. Business licenses are required for all temporary commercial activities.

- a. "Saturday Market" type sales of produce from temporary sales shelters (including vehicles) from 8:00 a.m. to 4:00 p.m. on Saturdays and 1:00 p.m. to 5:00 p.m. on Sundays, [or one weekday that does not precede or follow a weekend market, from 8:00 am to 4:00 pm](#), subject to obtaining a special event permit pursuant to LO. The type of products sold may include additional products, such as art, crafts, and food for consumption at the market, so long as such nonproduce sales are secondary to the market’s sale of produce. Such market sales may locate in only one location each in the East End Commercial District (see Figure 50.03.005-A), West End Commercial District (see Figure 50.03.005-B), and IP zone and shall have sufficient parking on site or shall

arrange to utilize the parking areas of an adjacent business which does not normally operate on weekends. All produce and debris will be removed at the end of the business day.

Figure 50.03.005-A: East End Commercial District



50.04.001 DIMENSIONAL TABLE

The following dimensional regulations apply to the base zones as identified in each table. These dimensions may have exceptions or modifications as identified in LOC 50.04.003.1, Additional Dimensional Exceptions.

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3. RESIDENTIAL HIGH DENSITY ZONES

a. Dimensions

Development in the R-W, R-3, R-2, and R-0 zones shall conform to the development standards in Table 50.04.001-11 except as modified below:

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e. Yard Setback – Additional Standards

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iii. Abutting Low Density Residential

Where a lot zoned R-0, 2, or 3 either abuts a lot zoned R-6, 7.5, 10, or 15, or if the abutting lot is outside city boundaries, abuts a lot that would be zoned R-6, 7.5, 10, or 15 pursuant to LOC 50.01.004.5 if it were then annexed, the building on the R-0, 2, or 3 lot shall be set back from the common line a distance equal to the required yard setback for the zone in Table 50.04.001-13 or the height of the primary building on the R-0, 2, or 3 lot, whichever is greater.

iv. Special Setbacks for Steeply Sloped Lots

On steeply sloped lots, the minimum required front yard setback for detached dwellings shall be 18 ft.

Item 7 (M): Apply increased setback to lots that would be low density upon annexation.

50.04.003 EXCEPTIONS, PROJECTIONS, AND ENCROACHMENTS

1. ADDITIONAL DIMENSIONAL EXCEPTIONS

The following section may include exceptions to the dimensional standards of LOC 50.04.001

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6. SPECIAL DETERMINATION OF YARDS AND YARD REQUIREMENTS; SETBACK PLANE EXEMPTION

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b. Through Lots

Unless the prevailing front yard pattern on abutting lots on the same block face ~~adjoining~~ lots indicates otherwise, front yards shall be provided on all street frontages. Where one of the front yards that would normally be required on a through lot is not in keeping with the prevailing yard pattern, the City Manager may waive the requirements for the normal front yard and substitute therefore a special yard requirement which shall not exceed the average of the yards provided on ~~adjacent~~ abutting lots.

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Item 8 (M): “Adjoining” is not a defined term in the CDC. Reference should be to “abutting on the same block face”, which includes only those touching the subject lot on the same street face (same language as used for Front Setback Averaging (January 2018)).

50.05.001 GLENMORRIE R-15 OVERLAY DISTRICT

1. PURPOSE

The purpose of the overlay is to ensure that new residential development occurs in a way that is compatible with the unique character of the Glenmorrie Neighborhood by not adversely impacting the privacy of adjacent neighbors and by preserving the country character.

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5. PLANTINGS AND BUFFERING

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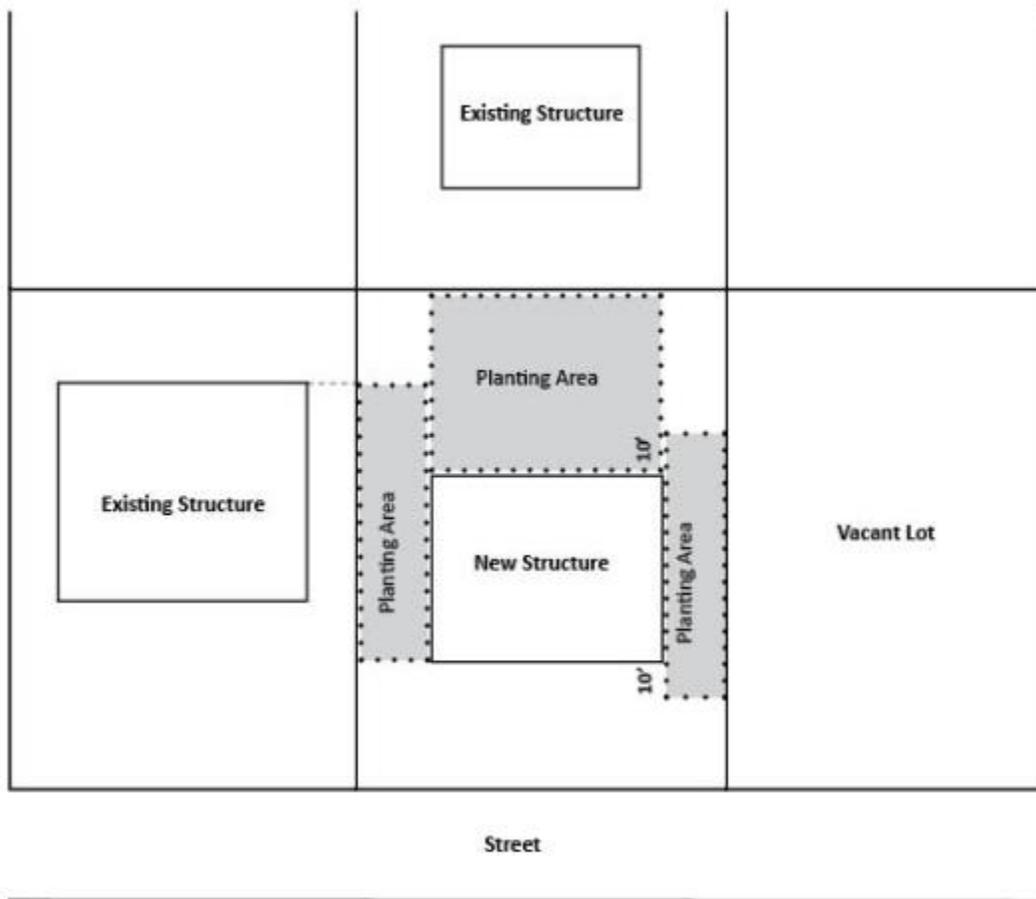
b. Plantings and Buffering Plan

- i. At the time of submission of the building permit application, the applicant shall file either a Plantings and Buffering Plan or a waiver under subsection 5.b.iii of this section.

ii. The Plantings and Buffering Plan shall meet the following requirements:

- (1) Plant units, as described in Table 50.06.001-2: Standard Plant Units, Standard Units A through D, plus Alternative Glenmorrie Standard Unit E consisting of 25 three-ft. high shrubs, shall be provided parallel and adjacent to the side yard and rear yard planes of the proposed structure or retaining wall as follows:
 - (a) If a structure exists on an abutting lot: one plant unit for every 50 linear ft. of the side yard and rear yard planes of the proposed retaining wall or structure plus the abutting plane of the structure on the abutting lot;
 - (b) If no structure exists on an abutting lot: one plant unit for every 50 linear ft. of the side yard and rear yard planes of the proposed retaining wall or structure extended ten ft. beyond the structure or retaining wall. See Figure 50.05.001-C: Plant Unit Placement.

Figure 50.05.001-C: Plant Unit Placement



- (2) Where the linear measurement of the side or rear yard plane (plus the ten-ft. extension, if required) is less than 50 ft., or where dividing the linear measurement into 50-ft. segments results in a remainder segment of less than 50 ft., the planting density for that plane or remainder segment shall consist of a corresponding

percentage of a Planting Unit. If the percentage results in a fraction of a plant, the fraction shall be rounded up to the next whole number.

- (3) Where required plant unit areas overlap, the plants in the overlapped area may satisfy both plant unit requirements.
- (4) Existing plants may be used to fulfill plant unit requirements.
- (5) Native plants are encouraged (consult Lake Oswego’s Master Plant List).

~~iii.—Waiver. If the abutting property owner consents in writing, a Plantings and Buffering Plan shall not be required for the side or rear yard of the proposed structure or retaining wall abutting the consenting owner’s property.~~

Item 9 (M): *Cosner v. Umatilla* – improper delegation of city code authority. Ability of abutting property owner to waive setback requirements for landscaping is removed.

50.05.004 DOWNTOWN REDEVELOPMENT DESIGN DISTRICT

1. PURPOSE

The purpose of this section, the Downtown Redevelopment Design District, is to guide the redevelopment of downtown Lake Oswego in a manner that creates a feeling of vitality and sense of place in order to attract private investment and redevelopment of the area and create a community center that reflects and enhances the character of the City of Lake Oswego.

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5. BUILDING SITING AND MASSING

Building siting and massing shall create a village character by compliance with the following requirements:

a. Complex Massing Required

New buildings shall use the siting and massing characteristics of the Lake Oswego Style such as complex massing and asymmetrical composition. See 50.11.001, Appendix A – Lake Oswego Style.

b. Pedestrian Oriented Siting

New commercial buildings shall be sited in order to maximize the amount of building frontage abutting pedestrian ways.

c. Roof Forms

New buildings shall use gable or hipped roof forms. Flat roofed building shall only be allowed pursuant to LOC 50.08.~~005~~003.

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Item 10 (M): Correct a cross-reference.

8. LANDSCAPING AND SITE DESIGN REQUIREMENTS

a. Purpose. Landscaping shall be designed to enhance building design, enhance public views and spaces, define the street, provide buffers (screening) and transitions, and provide for a balance between shade and solar access.

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c. Style and Design.

- i. Landscaping shall be coordinated with the building design so that landscaping complements the building design. Landscape design shall incorporate elements such as iron/steel plant balconies, metal fences, railing and gates, masonry walls, window boxes, hanging plant brackets and other similar features that complement the character of the building design.
- ii. Landscaping may be placed in pots, raised planters, or flower boxes.
- iii. Courtyards visible from the public street shall be provided on new commercial, multi-family and residential mixed use structures along any facade greater than 200 ft. Courtyards shall be at least 200 sq. ft. in area with no single dimension less than 15 ft. and shall contain landscaping or features that complement the design of the building and the surrounding structures and landscaping. Courtyard amenities, including art or fountains, may be required as part of the design by the reviewing authority.
- iv. Landscaping design shall be compatible with abutting or adjacent properties and shall consider the relationship of plantings, site furnishings and materials on those properties and the proposed site.

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Item 11 (P): In the DRD, courtyards are required on facades longer than 200 ft. This amendment identifies minimum dimensions for required courtyards. [As a comparison, Village Gathering Places (VGPs) in LGVCO have a maximum size of 2,500 sq. ft. and minimum dimension of 20 ft.; VGPs are not a required design element and are meant to be used as public gathering spots.]

9. PARKING REQUIREMENTS

Parking shall be designed to provide adequate space while preserving and enhancing the village character of Lake Oswego, through compliance with the following criteria:

a. Number of Spaces

New uses shall provide the number of parking spaces required under the City of Lake Oswego Parking Standards (LOC 50.06.002), modified as follows:

- ~~i. Because of the layout of downtown Lake Oswego and the ready availability of on-street parking and transit, the minimum parking requirement shall be 0.75 of the total required for each use pursuant to Table 50.06.002-1, Minimum Off-Street Parking Space Requirements.~~
- ~~ii. Retail uses within 1,000 ft. of 100 or more residential units may further reduce their total parking requirements to 0.9 of the total spaces required after all other adjustments are made pursuant this section.~~
- ~~ii. Within the East End General Commercial zone only, only the parking modifiers permitted by the Downtown Redevelopment District Design Standards, and Development Size, or the Parking Study provision are permissible for reduction options.~~
- iv. New uses within existing buildings may demonstrate compliance with the parking requirement through the use of existing spaces on adjacent property if the applicant complies with all of the following criteria:
 - (1) The applicant demonstrates that the proposed use has substantially different peak period parking needs than uses served by the parking spaces on the adjacent property. Evidence necessary to support such demonstration may include a by-the-hour parking study, patron use evidence from register tapes, or written employees transportation and parking policies.
 - (2) The applicant demonstrates that he or she has permission of the owner of the adjacent property to utilize his or her property for parking, either by an easement or a parking agreement or leases that will last for the life of the use.
 - (3) The location of the adjacent property complies with LOC 50.05.004.9.b.
- iiiv. High turnover eating or drinking establishments such as coffee shops, ice cream parlors and "take-and-bake" food services may vary from the parking requirements for restaurants by providing evidence that demonstrates the short term nature of their employee and patron parking needs. In no case, however, shall parking be reduced below the number of spaces that would be required for an equal size retail store.
- iiiv. Existing on-street parking along the property frontage shall be used to calculate parking requirements.
- iiiv. In the portion of the downtown shopping and business district shown on Figure 50.05.004-L: Downtown – No Additional Required Parking, below, no additional parking shall be required for existing or proposed uses when:

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Item 12 (M): All Modifiers moved to Parking Modifier section in Parking Standard (LOC 50.06.002).

13. CLEAR AND OBJECTIVE HOUSING STANDARDS FOR APPROVAL

a. Purpose

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g. Landscaping and Site Design Requirements

i. Purpose

The following standards are intended to ensure that landscaping and site design elements help create a “village character” by providing high-quality landscape elements. Landscaping should be designed to enhance building design, enhance public views and spaces, define the street, provide buffers (screening) and transitions, break up scale and proportion, and provide for a balance between shade and solar access.

ii. Amount of Landscaping Required

(1) Landscaping on the site, visible from the ground, shall comply with the following amounts:

- (a)** Residential and live/work: 15% of the lot.
- (b)** Nonresidential development: 10% of the lot.

(2) Vines on espaliers shall be placed along at least one building wall.

(3) In addition to the landscaping required in subsection 8.b.i of this section, landscaping for screening and buffering shall be required:

- (a)** To screen public or private utility and storage areas and parking lots.
- (b)** As a separation between dissimilar uses.

iii. Style and Design

(1) Landscaping and courtyards shall be coordinated with the building design so that landscaping and courtyard features complement the building design. This shall be accomplished by incorporating the same materials and/or colors into landscape and courtyard elements as used within the building, or by incorporating accent materials and/or colors from the building. This requirement applies to landscape and

courtyard elements such as iron/steel plant balconies, metal fences, railing and gates, masonry walls, paving, window boxes, hanging plant brackets.

- (2) Landscaping may be placed in pots, raised planters, or flower boxes.
- (3) Courtyards visible from the public street shall be provided on new multi-family and residential mixed use development along any facade longer than 200 ft. Courtyards shall be at least 200 sq. ft. in area with no single dimension less than 15 ft. and shall include one or more of the following elements: seating, art, or fountains/water features.

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Item 11 (P): In the DRD, courtyards are required on facades longer than 200 ft. This amendment identifies minimum dimensions for required courtyards. [As a comparison, Village Gathering Places in LGVCO have a maximum size of 2,500 sq. ft. and minimum dimension of 20 ft.; VGPs are not a required design element and are meant to be used as public gathering spots.]

h. Parking Requirements

Parking shall be designed to provide adequate space while preserving and enhancing the village character of Lake Oswego, through compliance with the following criteria:

i. Number of Spaces

New uses shall provide the number of parking spaces required under the City of Lake Oswego Parking Standards (LOC 50.06.002), modified as follows:

- ~~(1) Because of the layout of downtown Lake Oswego and the ready availability of on-street parking and transit, the minimum parking requirement shall be 0.75 of the total required for each use pursuant to Table 50.06.002-1, Minimum Off Street Parking Space Requirements.~~
- ~~(2) Retail uses within 1,000 ft. of 100 or more residential units may further reduce their total parking requirements to 0.9 of the total spaces required after all other adjustments are made pursuant to this section.~~
- ~~(3) Within the East End General Commercial zone only, only the parking modifiers permitted by the Downtown Redevelopment District Design Standards, and Development Size, or the Parking Study provision are permissible for reduction options.~~
- (14) New uses within existing buildings may demonstrate compliance with the parking requirement through the use of existing spaces on adjacent property if the applicant complies with all of the following criteria:

(a) The applicant demonstrates that the proposed use has substantially different peak period parking needs than uses served by the parking spaces on the adjacent property. Evidence necessary to support such demonstration may include a by-the-hour parking study, patron use evidence from register tapes, or written employees' transportation and parking policies.

(b) The applicant demonstrates that he or she has permission of the owner of the adjacent property to utilize his or her property for parking, either by an easement or a parking agreement or leases that will last for the life of the use.

(c) The location of the adjacent property complies with LOC 50.05.004.9.b.

(25) High-turnover eating or drinking establishments such as coffee shops, ice cream parlors and "take-and-bake" food services may vary from the parking requirements for restaurants by providing evidence that demonstrates the short-term nature of their employee and patron parking needs. In no case, however, shall parking be reduced below the number of spaces that would be required for an equal size retail store.

(36) Existing on-street parking along the property frontage shall be used to calculate parking requirements.

(47) In the portion of the downtown shopping and business district shown on Figure 50.05.004-Z: Downtown – No Required Parking, below, no parking shall be required for existing or proposed uses when:

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Item 12 (M): All Modifiers moved to Parking Modifier section in Parking Standard (LOC 50.06.002)

50.05.007 LAKE GROVE VILLAGE CENTER OVERLAY DISTRICT

1. PURPOSE

The purpose of the Lake Grove Village Center Overlay District (LGVC Overlay) is to implement the vision, goals, and policies of the Lake Grove Village Center Plan, a special district plan within the City of Lake Oswego Comprehensive Plan. Implementation is intended to occur through land use requirements, development standards, and incentives that promote an attractive, pedestrian and bicycle friendly, mixed use center. The LGVC Overlay features special standards to address specific conditions and ensure desired features and character as follows:

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4. SITE DIMENSIONAL STANDARDS

a. Purpose

These standards are intended to encourage buildings to be built at a pedestrian scale and create a district that appears and operates like a traditional town or village with commercial and mixed use structures centered on a primary commercial street, Boones Ferry Road. Village Edge and Village Transition Area requirements ensure heights compatible to adjacent residential development and provide a transition in scale, massing and height from the core commercial area to surrounding residential areas.

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e. Streetfront Environment

Purpose: Ensure that buildings create a sense of enclosure along public streets.

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i. Build-To Line

Buildings shall be located to comply with the build-to line per Table 50.05.007-4 below, as illustrated in Figure 50.05.007-M: Build-To Line.

(1) Notwithstanding permitted adjustments, buildings shall meet build-to line requirements set forth in Table 50.05.007-4 below. The build-to line standard is illustrated in Figure 50.05.007-M: Build-to Line.

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(4) The build-to line may be changed as set forth below:

- (a) Up to ten ft. to protect any tree with a trunk diameter of at least ~~five caliper in. or larger measured at 54 in. above mean ground level at the base of the trunk.~~ six inches DBH
- (b) As necessary to accommodate a public plaza meeting the requirements set forth in Building Design, LOC 50.05.007.5.i.ii, Public Plaza.
- (c) As necessary to accommodate a Village Commons or Gathering Place in accordance with LOC 50.05.007.7.c.
- (d) As determined by the City Engineer to preserve existing trees and satisfy requirements set forth in LOC 50.05.007.6.b.i, 50.05.007.6.b.ii(1)(c) through (e), and 50.05.007.6.b.ii(2)(a) through (f), Site Planning Standards.

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6. SITE PLANNING STANDARDS

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e. Landscape Requirements

Purpose: Reinforce village scale and character, buffer dissimilar uses, and ensure a unified streetscape theme and continuity within the Lake Grove Village Center Overlay District as illustrated in the Village Theme section of the Lake Grove Village Center Design Handbook.

i. Minimum Area Requirement

Landscaping shall be installed on at least 15% of the development site on which buildings are constructed. This is inclusive of area provided in required village gathering places, landscaping required for parking lots, landscaping within any required buffer areas, and landscaping within public plazas and gathering places. Landscaping may include courtyards, raised beds and planters.

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iv. On-Site Tree Requirements

One tree with a minimum of two in. ~~diameter at 54 in. above grade~~caliper shall be provided for every 500 sq. ft. of landscaped area. Where site conditions warrant, native trees such as Douglas fir, western red cedar, western hemlock, oak and maple of at least two in. diameter in caliper and which reach a mature height of at least 70 ft. shall be planted.

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vii. Street Trees

(1) Location and Spacing

- (a)** Street trees shall be provided within or immediately adjacent to the public right-of-way or a public easement at an average of every 30 linear ft. along the entire development site frontage.
- (b)** Notwithstanding the requirements in subsection 6.e.vii(1)(a) of this section, street trees shall be provided as set forth in LOC 50.05.007.6.b.ii, Design Standards.

- (2)** Street trees shall be a minimum of two in. in caliper, ~~measured 54 in. above grade~~ when planted and shall be from the approved street tree list unless otherwise provided in this section.

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viii. Parking Areas

Landscape standards for parking areas are as follows:

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(3) Trees

Trees shall be integral to parking lot design and the overall site plan to provide for aesthetics and shade.

- (a)** Special consideration shall be taken to preserve ~~significant~~ substantial trees. Alternative surface treatments and pervious surfaces shall be allowed as appropriate to preserve existing mature trees.
- (b)** Trees planted to meet the landscaping requirements for parking lots shall be deciduous shade trees of at least two in. diameter in caliper which reach a minimum mature height of at least 30 ft. and have the canopy and structure necessary to cast moderate to dense shade.
- (c)** Where adequate room is available, large-scale evergreen trees such as Douglas fir, western red cedar, western hemlock, and incense cedar of at least six to eight ft. in height and which reach a mature height of at least 70 ft. shall be incorporated into the landscape theme.
- (d)** Exceptions to requirements of (3)(b) and (c) of this section may be allowed for circumstances that limit placement of trees such as overhead lines, underground utilities and confined spaces.

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ix. Tree Preservation

Purpose: Tree preservation shall preserve and promote a wooded character.

The following standards shall apply in addition to LOC Chapter 55 (Tree Code). In case of a conflict, the more restrictive standard applies.

- (1)** Development plans shall preserve existing mature Douglas fir evergreen trees and other ~~significant~~ substantial trees except where unavoidable due to compliance with the requirements of this Code. ~~Significant-Substantial~~ trees for purposes of this section are trees measuring 18 in. ~~diameter or greater at a height of 54 in. above mean ground level at the base of the trunk~~ DBH, or of unique horticultural quality or historic importance to the greatest extent practicable. ~~Significant-Substantial~~ trees do not include invasive, dead or hazardous trees.

(2) Mitigation

- (a)** Mitigation trees shall be planted so that, over time, groves of trees will be established.

- (b) Mitigation shall require trees with a diameter of ~~five-six caliper~~ in. DBH or greater which are removed be replaced with trees of the same or approved variety with a ~~diameter-caliper~~ no less than three ~~caliper~~ in. each, to equal ~~or exceed~~ the cumulative diameter ~~caliper~~ inches of trees removed.

Exception: Invasive trees do not require mitigation.

- (c) If in the City's determination there is insufficient available space on the subject property, replacement planting shall occur in an open space tract, or City-owned or dedicated property within the Lake Grove Village Center Overlay District subject to the approval of authorized property owners. If in the City's determination no feasible alternative exists to replant required mitigation, the applicant shall pay into the tree fund as provided in LOC 55.02.084, Mitigation Required.

Item 13: LGVCO Tree Code Fixes – see below for full explanation.

f. Buffer Area and Screening

i. Requirements Adjacent to Low Density Residential

Where a property within a commercial, R-0 or R-3 zone abuts an R-7.5 or R-10 zone, the following shall be provided:

- (1) Minimum ten-ft. wide landscaped buffer area, except that a public garage per Figure 50.05.007-U: Parking Facilities and Access Coordination Map, or driveway serving the garage, shall be separated by a 15-ft. landscape buffer area; and
- (2) A six-ft. tall wood or masonry sight-obscuring fence or wall along the property line. The unfinished or structural side of the fence shall face the use to be screened.

ii. Permitted in Buffer Area

A buffer area may only be occupied by utilities, screening and landscaping. No buildings, accessways or parking areas shall be allowed in a buffer area except to allow direct ingress or egress to a site.

i. Landscape Requirements

The buffer area shall be landscaped as follows:

- (1) One row of two- to three-in. caliper deciduous trees, spaced no more than 15 ft. apart; or one row of evergreen trees not less than six ft. tall and spaced no more than 15 ft. apart; or a mix of evergreen and deciduous trees planted 15 ft. apart.
- (2) Shrubs planted at appropriate spacing for the species. Shrubs shall attain a height of at least six ft. within three years of planting.

- (3) The remaining area shall be planted in ground cover and mulched with a suitable material to a depth of three in.

iv. Screening Required

Storage, trash collection areas and equipment shall be oriented away from abutting residential districts and screened by sight-obscuring fencing or landscaping.

v. Special Buffer Requirements

The commercial area bounded by Bryant, Boones Ferry, Reese, and the right-of-way north of Sunset shall comply with the following special requirements:

- (1) A minimum five-ft. buffer shall be required measured from the southern commercial property line abutting the existing six-ft. right-of-way. Landscaping in accordance with this section shall be provided. Existing landscaping may be used to satisfy this requirement provided it currently provides screening between the commercial and residential uses in accordance with this section.
- (2) Residential lots abutting the existing six-ft. right-of-way shall be screened from adjacent commercial uses by a single six-ft. tall, sight-obscuring fence or wall. ~~Unless waived by the abutting residential property owner,~~ The fence or wall shall be located at the abutting property line of the residential zone and within the right-of-way. Fence or wall construction within the right-of-way shall require an encroachment permit as set forth in LOC Article 42.18, Public Rights-of-way and Easements. Fence design is subject to approval of the City Manager. Gates may be provided in the fence or wall if requested by the abutting residential property owner and approved by the owner of the adjacent commercial property. Locating parallel fences or walls at both commercial and residential lot lines abutting the right-of-way is prohibited.

Item 14 (M): *Cosner v. Umatilla* – improper delegation of city code authority. Ability of abutting property owner to waive fencing/buffering requirements is removed.

7. SPECIAL REQUIREMENTS AND STANDARDS

a. Applicability

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e. Park Streetfront Environment

Purpose: Ensure trees and streetscape elements create spatial enclosure and desired character along public streets for street frontage designated Park Lane, Crossroads Gateway, or Campus Woods.

These standards apply to lots with street frontage designated Park Lane, Crossroads Gateway, or Campus Woods.

i. Tree Retention

No tree with a trunk diameter of at least eight in. at 54 in. above grade DBH located within 30 ft. of the Kruse Way right-of-way or within 20 ft. of any other public street right-of-way shall be removed unless determined to be dead or hazardous pursuant to LOC Chapter 55, Trees, or located within area required to provide the separated pathway and retaining wall set forth in subsection 7.e.iii of this section, Crossroads Gateway Special Requirements.

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Item 13 (M and P): LGVCO Tree Fixes:

- (1) Increases size of regulated trees to 6" DBH, to match Tree Code (M).
- (2) To avoid confusion with Tree Code, renames "significant" trees as "substantial." [Tree Code: Significant Tree is tree that is "healthy, non-invasive, over 15" DBH, and considered significant to the neighborhood due to size, species or distinctive character, or the only remaining tree on the property." LGVCO: Significant Tree is 18"+ DBH, or unique.] (M)
- (3) Clarifies that no mitigation is required for invasive trees removed in Development Review. (M)
- (4) Corrects references to DBH (mature trees) and caliper (mitigation trees) throughout. (M)
- (5) Mitigation Rate: Request direction from Planning Commission. LGVCO requires caliper inches lost to be mitigated 1:1 (with the proposed exception of invasive trees). Staff reviewed the legislative history of the LGVCO and could find no specific reference to the reasoning behind the mitigation rate of 1" to 1" [LU 06-0025]. (P)

50.05.010 SENSITIVE LANDS OVERLAY DISTRICTS

5. STANDARDS APPLICABLE TO RESOURCE CONSERVATION (RC) AND HABITAT BENEFIT AREA (HBA) OVERLAY DISTRICTS

c. RC District and HBA District Area Development Standards

- i. Except as provided in subsection 5.c.iii(8), Landscaping, of this section, a criterion applicable to the RC protection area shall apply to the entire RC district if no RC protection area has been established. Within an HBA the criterion applies where an HBA protection area is established pursuant to LOC 50.05.010.7.

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i. Development Standards

If the proposed types of development are permitted within the RC district or HBA protection area, the development activity, use or activity shall comply with the following standards, and the construction standards set forth in LOC 50.05.010.4.d:

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(7) Resource Enhancement Projects

Resource enhancement projects shall remove only invasive vegetation; non-native or native vegetation may be removed only if recommended for removal by a natural resource professional in order to enhance and restore natural resources. Resource enhancement projects ~~and~~ shall plant only vegetation within the RC district or HBA protection area, if one has been established, listed on the Plant List. Any pathways or structures proposed as part of a resource enhancement project shall retain existing trees, unless otherwise recommended for removal by a natural resource professional in order to enhance and restore natural resources.

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(9) Tree Removal

Tree removal on property within the RC district or HBA protection area shall be subject to the following criteria:

- (a) Tree removal in an RC district that has no established RC protection area shall be subject to a Dead Tree Removal Permit (LOC 55.02.042.3), ~~a~~ Hazard Tree Removal Permit (LOC 55.02.042.4), or a Verification Tree Removal Permit associated with a Resource Enhancement Project (LOC 55.02.042.7). Tree removal pursuant to LOC 55.02.080 (Type II) is prohibited in an RC district prior to designation of the protection area.

- (b) Tree removal within a designated RC or HBA protection area shall be subject to a Dead Tree Removal Permit (LOC 55.02.042(3)), ~~a~~ Hazard Tree Removal Permit (LOC 55.02.042(4)), or a Verification Tree Removal Permit associated with a Resource Enhancement Project (LOC 55.02.042.7). Tree removal for development permitted pursuant to this section, excepting subsection 5.c.iii(8) of this section, and this subsection, within a protection area is permitted pursuant to LOC 55.02.080 (Type II).
- (c) Tree removal outside of the protection area shall comply with LOC Chapter 55.
- (d) These limitations are not intended to prohibit removal of trees in an emergency pursuant to LOC 55.02.042(5), Emergency Permit.

Item 15 (P): Allow removal of native trees when qualified resource professional recommends (i.e., diseased, oak woodland restoration, or to prevent overcrowding, etc.).

50.06.002 PARKING

1. APPLICABILITY

The provisions of this section shall apply to all development which generates a parking need. This shall include the construction of new structures, the remodeling of existing structures and a change of use which increases on-site parking or loading requirements or which changes access requirements

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v. Reduction for Parking Space Requirements

- (1) Parking space requirements shall be reduced in developments where compensating factors exist which would offset the parking demand (such as access to transit facilities, pedestrian and bicycle access, development size, or combined, or the parking study provision). Refer to Table 50.06.002-4 for reduction options, ~~and subsections (2)(a)(v)(1)(a) and (b) of this section for zone or overlay district provisions.~~

TABLE 50.06.002-4: PARKING REQUIREMENT MODIFIERS (For zone- and overlay-specific parking modifiers, refer to LOC 50.06.002.1(v)(1) (a-c) below)	
TYPES OF MODIFICATIONS	MODIFIERS
Development Size on a Single Site (Commercial, Public and Industrial Use)	
Gross Floor Area	Multiplier
≤ 20,000 sq. ft.	No reduction

> 20,000 sq. ft.	0.85 x requirement
Access to Transit Facilities	
Transit shelter on fronting street within 50 ft. of building	0.85 x requirement
Transit shelter within 500 ft. of building	0.90 x requirement
Transit facilities on fronting street within 500 ft. of building	0.90 x requirement
Pedestrian and Bicycle Access <u>(Commercial, Public and Industrial Uses)</u>	
Access Proximity	Multiplier
100 <u>or more</u> residential units within 1,000 feet of site	0.90 x requirement
Parking Study	
Parking Study Provisions	The parking study shall demonstrate sufficient number of parking spaces <u>for the use per LOC 50.06.002.2(a)(ii)(2)</u> for shared parking with other multiple uses per LOC 50.06.002.2.a.iv(2).

TABLE 50.06.002-4: PARKING REQUIREMENT MODIFIERS				
Types of Modification	Modification Requirements and Modifiers			
Development Site Size (DS)	Commercial, Public, and Industrial Uses (Based on Development Size on a Single Site (DS))			
	Gross Floor Area	Multiplier		
	1—20,000 sq. ft.	No reduction		
	> 20,000 sq. ft.	0.85 x requirement		
Access to Transit Facilities (TA)	Transit Shelter	On-Fronting Street	Within 50 ft. of building	0.85 x requirement
	Transit Shelter		Within 500 ft. of building	0.90 x requirement

TABLE 50.06.002-4: PARKING REQUIREMENT MODIFIERS				
	- Transit Facilities	On-Fronting Street	Within 500 ft. of building	0.90 x requirement
-	-			
Downtown Redevelopment Design District	- See below			
Pedestrian and Bicycle Access (PA)	Commercial, Public and Industrial Uses			
	- 400 or more residential units within 1,000 ft.		0.90 x requirement	-
Downtown Redevelopment Design District	- See below			
Downtown Redevelopment Design District	- 0.75% x requirement			
FMU Ground Floor Exemption	- Mixed-use development in FMU zone	Exclude up to 15,000 sq. ft. ground floor nonresidential G.F.A. per building or site (in case of multiple buildings on the site).		
Parking Study	- The parking study shall demonstrate sufficient number of parking spaces for shared parking with other multiple users per LOC 50.06.002.2.a.iv(2).			

- (a) **Allowed FMU Modifiers:** The only allowed modifiers to the minimum numerical parking requirements are: ~~Within the FMU zone,~~
- (i) Mixed Use Development: Exclude up to 15,000 sq. ft. ground floor non-residential gross floor area per building or site (in case of multiple buildings on the site). ~~The FMU Ground Floor Exemption Modifier; and~~
 - (ii) Commercial Residential Uses: ~~The Transit Facilities and Pedestrian and Bicycle Access Modifiers for Commercial Residential Uses;~~
- ~~are the only permitted modifiers that allow reduction of the minimum numerical parking requirements in Table 50.06.002-3.~~

(b) Allowed LGVCO Modifiers: The only allowed modifiers to the minimum numerical parking requirements are:~~All properties within the district,~~

(i) The Development Site Size (DS) Modifier; and

(ii) The Pedestrian and Bicycle Access (PA) Modifier;

~~are the only permitted modifiers that allow reduction of the minimum numerical parking requirements in Table 50.06.002-3.~~

(c) Allowed DRD Modifiers:

(i) All Properties: Because of the layout of downtown Lake Oswego and the ready availability of on-street parking and transit, the minimum parking requirement shall be 0.75 of the total required for each use pursuant to Table 50.06.002-3.

(ii) Retail Uses: Retail uses within 1,000 ft. of 100 or more residential units may further reduce their total parking requirements to 0.9 of the total spaces required after all other applicable modifiers are applied.

(iii) Within the East End Commercial Zone Only: Properties within this zone may only use the Development Size modifier, the modifiers in (c)(i) and (c)(ii), above, or the Parking Study provision.

Item 12 (M): Parking modifiers in DRD are located in two places: this table, and the DRD overlay standards. This amendment moves all DRD modifiers to the table or to subsections following the table (similar to LGVCO and FMU modifiers).

[Rather than show all changes made to the existing table, this shows old table deleted and new table inserted. Show new table as new text at PC adoption.]

50.06.003 CIRCULATION AND CONNECTIVITY

3. ON-SITE CIRCULATION – BIKEWAYS, WALKWAY, AND ACCESSWAYS

a. Applicability

This section is applicable to all subdivisions and to all minor and major development involving the construction of a new structure other than a detached single-family dwelling, duplex, or accessory structure, ~~and subdivisions and planned developments~~. This section is also applicable to modifications which increase the square footage of commercial, industrial, public use or institutional buildings by more than 10%. For the purposes of this section, an "existing building" is a building as it exists on February 19, 1998.

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Item 16 (M): Edited Applicability Statement to read better, and eliminated specific reference to Planned Developments because PDs are a type of subdivision.

50.07.003 REVIEW PROCEDURES

1. APPLICATION

a. Application for Development

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iv. Manner of Providing Letter Notice of Neighborhood Meeting

(1) Mailed Notice

The letters required by subsection 1.f.iii(1) of this section shall be sent as follows:

(a) For recognized neighborhood associations:

(i) By regular mail (or electronic mail if consented to) ~~By certified mail, return receipt requested,~~ to the chairs of the neighborhood associations, County CPO, or homeowners association; and

(ii) By regular mail (or electronic mail if consented to) to the other officers of the recognized neighborhood associations; and

(b) For property owners, by regular mail. The names and mailing addresses of the property owners shall be as shown by the most recent property tax assessment roll.

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viii. Applicant’s Documents Filed with Application

An application shall not be accepted for filing unless and until the applicant demonstrates compliance with this section by including with the application:

- (1) A copy of the ~~certified~~ letter to the recognized neighborhood associations, County CPO, or homeowners association, ~~with the a copy of return receipt;~~
- (2) A copy of the letter to officers of the associations and to property owners and residents pursuant to subsection 1.f.iv of this section, including an affidavit of mailing and a copy of the mailing list containing the names and addresses of such owners and residents;
- (3) A copy of the required posted notice, along with an affidavit of posting;
- (4) A copy of the minutes of the meetings, and copies of any written comments from property owners, residents, and neighborhood association members; and
- (5) A copy of the materials that were presented at the neighborhood association meeting.

Item 18 (P): Certified mail not always effective, particularly if contact is not home or does not visit post office regularly. Amended regular mail (or electronic mail by consent), instead, for Neighborhood Chairs and others.

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h. Extensions or Continuances

- i. Extension to File Completed Application. In accordance with ORS 227.178(3), no extensions are allowed to the 180-day time period. ~~The applicant for a major or minor development may request one additional 180-day extension for filing a complete application.~~

~~[Editor’s Note: ORS 227.178(3), the statute that this subsection is based on, declares the application void if the information or a request to proceed based upon the application as previously submitted is not submitted by the 180th day. The City Attorney’s Office concludes that this subsection is therefore superseded by ORS 227.178(3), and no extensions to the 180-day “additional information” period are permissible.]~~

- ii. Extension to Complete Review and Decision on Application. The applicant for a major or minor development may request in writing a specified period of time for a continuance of review of a complete application. A request for an extension or continuance shall be deemed a waiver of the 120-day final action deadline contained in ORS 227.178 for the period of the extension or continuance, and for any additional time required for

rescheduling or re-noticing review proceedings. The total of all extensions for review of a complete application may not exceed 245 days

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Item 19 (M): Updated to reflect that the ORS statute does not allow extensions of the 180-day period in which to complete an application.

3. PUBLIC NOTICE/OPPORTUNITY FOR PUBLIC COMMENT

a. Written and Posted Notice for Minor Development

Prior to making a final decision on a minor development permit application, notice of the opportunity to comment upon an application and, if applicable, the date of a public hearing upon the application shall be given as follows:

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iv. Notice for Development within the Greenway Management Overlay District

In addition to the notification required above, the City shall notify the Oregon State Department of Transportation by ~~certified~~ regular mail (or electronic mail if consented to) ~~mail~~ immediately upon receipt of a complete application for development, change or intensification of use in the Greenway Compatibility Review Boundary area and shall notify the Department of final actions taken on the applications.

Item 18 (P): Certified mail not always effective, particularly if contact is not home or does not visit post office regularly. Amended to regular mail (or email if consented), instead, for Neighborhood Chairs and others.

50.07.007 LAND DIVISIONS

1. REQUIREMENTS FOR LAND DIVISIONS

All land divisions shall meet the requirements of this Code including all zone district standards and dimensions except as modified in this section.

a. Duration of Exemption from Subsequently Adopted Land Use Laws

Pursuant to ORS 92.040(2) and (3), for lots created by subdivision after [effective month and day of ordinance], 2018, construction within an approved subdivision shall be subject to the Lake Oswego land use laws in effect on the date of application and shall not be subject to subsequently adopted Lake Oswego land use laws unless the applicant elects otherwise, in which case all current laws apply. This exemption shall terminate three years from the date the tentative subdivision became final. [Additional Transition Exemption Expiration: For such lots created before [effective month and date of ordinance], 2018, the exemption shall expire on [effective month and date of ordinance], 2019.]

Item 20 (P): Per ORS 92.040(3), unless a municipality identifies a shorter “lock in” in period, the development standards in effect at the time a land division (partition, subdivision) was submitted are valid for 10 years. The proposed language was borrowed from City of Gresham code and identifies a three-year “lock in” period. Three years is consistent with the expiration of other development approvals: CUPs, DRs and PDs - see LOC 50.07.003.17, below. [Origin: developer inquiry].

17. EXPIRATION OF DEVELOPMENT PERMIT

- a. Except as otherwise provided in LOC 50.07.007.4.f, 50.07.005.5, or 50.07.007.3, or other provision of this Code, or as may be specifically stated as a condition of approval of a development permit, any permit issued under this Code shall expire **three years** following the final decision and effective date of any order constituting or approving the development permit unless:
- i. If development involves construction of a structure, at least 15% of the structural construction has occurred within three years of the date of final decision; and
 - ii. Development authorized by the permit is commenced and work has reasonably continued to completion of the development.
- b. Upon expiration, no further work on the development or use authorized by the development permit may be undertaken without obtaining a new development permit.
- c. The City Manager shall, in writing grant, a one-year extension to a development permit where the request for the extension is made by written application prior to the expiration of the three-year period.
- d. If the City Manager believes that work on the development has ceased prior to completion, or has otherwise been abandoned, the City Manager may, at any time, require the applicant to demonstrate that the applicant is proceeding with efforts to commence or to continue the development

Tigard: Prelim plat approval good for 1.5 years. Expires if Final Plat not submitted in that time.

Gresham: 2 year lock in window for final plat submittal; specific reference to ORS in Code.

West Linn: Unaware of statute.

Portland: Subdivisions follow State statute; for partitions, standards in effect on the date the building permit is submitted are applied.

Salem: 10 years max (used to be 6 but extended to max in econ downturn), but must request extension every 2 years and extension will be denied if there have been substantive changes in applicable standards. Applies this ORS to street width standards, etc., but not to standards applicable to development on each lot, such as setbacks, height, etc.

Milwaukie, Gladstone, Wilsonville, Tualatin - awaiting.

3. PLATTING

a. Preparation and Submittal of Final Plan or Plat

- i. The final plan or plat shall be ~~submitted~~ recorded within ~~one~~ three years of the date of the order setting forth the final decision. Upon written application, prior to expiration of the ~~three~~ one-year period, the City Manager shall, in writing, grant a one-year extension. Additional extensions may be requested in writing and will be submitted to the approving authority which approved the final decision for review of the project for conformance with the current law, development standards and compatibility with development which may have occurred in the surrounding area. The extension may be granted or denied and if granted may be conditioned to require modifications to bring the project into compliance with then current law and compatibility with surrounding development.
- ii. A final plan or plat shall include all information required by the final decision on the plan.

Item 20 Follow-Up (P): Related to Item 20 (establishing a “lock in” period for subdivisions/applicable standards), this amendment establishes a three year window for the RECORDING of a plat. Currently, an applicant can SUBMIT a plat to the City within the one-year window and stave expiration of the approval, but there is no time limit for actually RECORDING the plat. Three years is consistent with all other approvals (DR, CUPs, etc.).

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50.08.003 DESIGN VARIANCES

3. GENERAL DESIGN VARIANCE CRITERIA

The reviewing authority shall only approve a design variance if it determines that the following criteria have been met:

- a. The applicant demonstrates that:
 - i. Compliance with the applicable standard is not practicable due to the physical characteristics of the site or existing structure; or
 - ii. An alternative design will better accomplish the purposes, goals, or objectives of the base district and any adopted plan or overlay district applicable to the property.
- b. The applicant demonstrates that the proposed variance will:
 - i. Result in a project that is exceptional in the quality of detailing, appearance and materials; ~~and/or~~
 - ii. Create a positive unique relationship to other nearby structures, views or open space; or

- iii. If in the DRD (within R-2 only), the variance is necessary to create a complementary relationship with a viable existing structure on an abutting lot that is not designed in the Lake Oswego style.
- c. If the subject property is located in the R-DD zone or the Foothills Mixed Use District, the applicant demonstrates that:
 - i. The variance will not create an incompatible relationship between the proposed structure and the scale or character of the neighborhood, the scale or character of the street frontage, or the privacy of properties within 300 ft. of the subject property; and
 - ii. Any significant impacts to properties within 300 ft. of the applicant's property resulting from the variance are mitigated to the extent practical through building or site design features on the site.

Item 22 (P): Replaces “or” with “and” to make both criteria applicable to design variances Citywide. This was flagged by Planning Commission during discussion of LU 17-0039; the intent is to provide a higher standard that addresses both design quality AND nearby structures. DR staff recommends keeping b.i and b.ii as options.

LOC 50.10 DEFINITIONS AND RULES OF MEASUREMENT

50.10.003 DEFINITIONS

1. INTERPRETATION

- a. For the purposes of this Code certain terms and words are defined as follows: the words "used for" include "designed for" and vice-versa; words used in the present tense include the future, the singular tense includes the plural and vice-versa; the word "shall" is always mandatory; the word "may" is discretionary; the masculine gender includes the feminine gender, except as otherwise provided.
- b. In the case of conflict between two similar or identical terms, the term identified as Historic Preservation or Solar Access shall take precedence over the general term when applied to historic preservation or solar access requirements.

2. DEFINITION OF TERMS

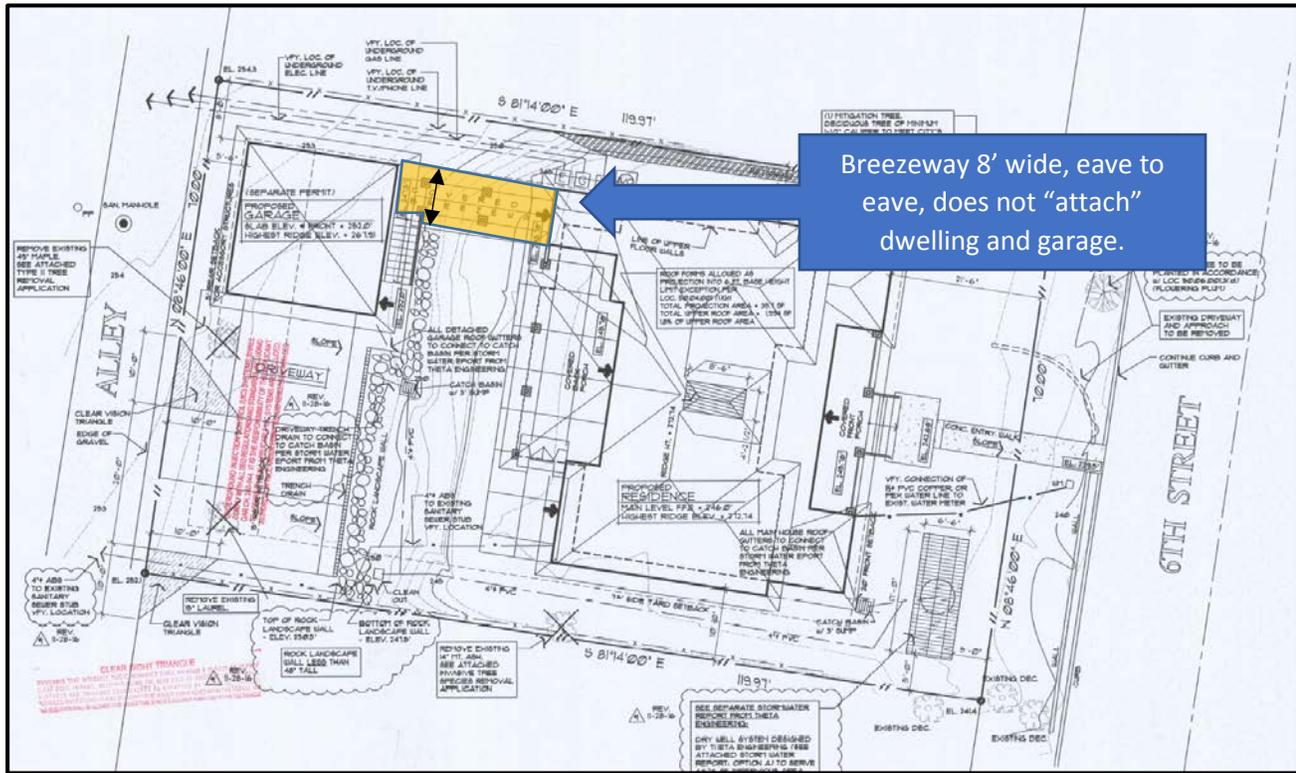
The following terms shall mean:

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Detached

A horizontal separation of three ft. or more, between the subject structure and nearby structures. The separation shall be from eave to eave, or where there are no eaves, the separation shall be measured between the closest elements (excluding breezeways no more than 8 ft. in width measured from eave to eave, air conditioning units, heat pumps, and similar attached or connected fixtures to the structure) of the two structures. (If the distance of separation is less than three ft. between two structures, they shall be deemed to be "attached.")

Item 23 (M): Under the definition of "Detached", two structures that are attached by a "breezeway" are not considered attached; this affects setbacks as accessory structures (i.e., detached garages) often have reduced side and rear setbacks as compared to the primary dwelling. This amendment clarifies the maximum width of a breezeway that connects two structures without the structures being considered "attached." Eight feet allows a 4 foot passage way and 2-foot eaves on each side; anything wider would make the structures "attached." Staff felt it was easier to clarify this definition than try to define "breezeway" as a separate entry. [Origin: Pre-App for setback variance; applicant proposed covered patio between dwelling and accessory structure as "breezeway." Staff interpreted the covering as beyond the usual definition of "breezeway".] Consider creating a graphic for illustration.



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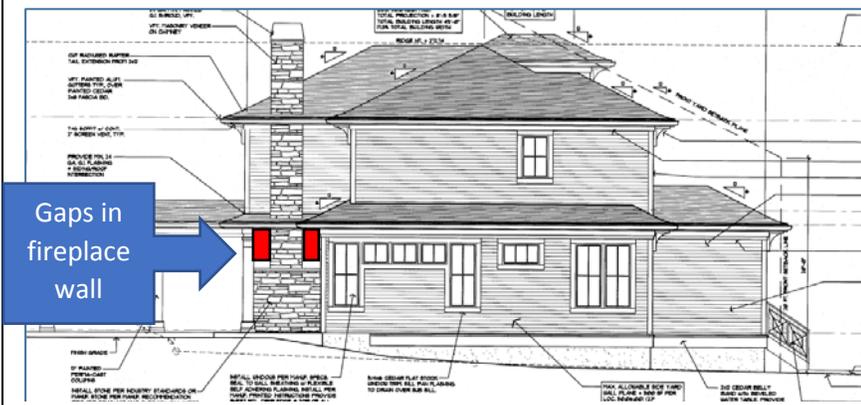
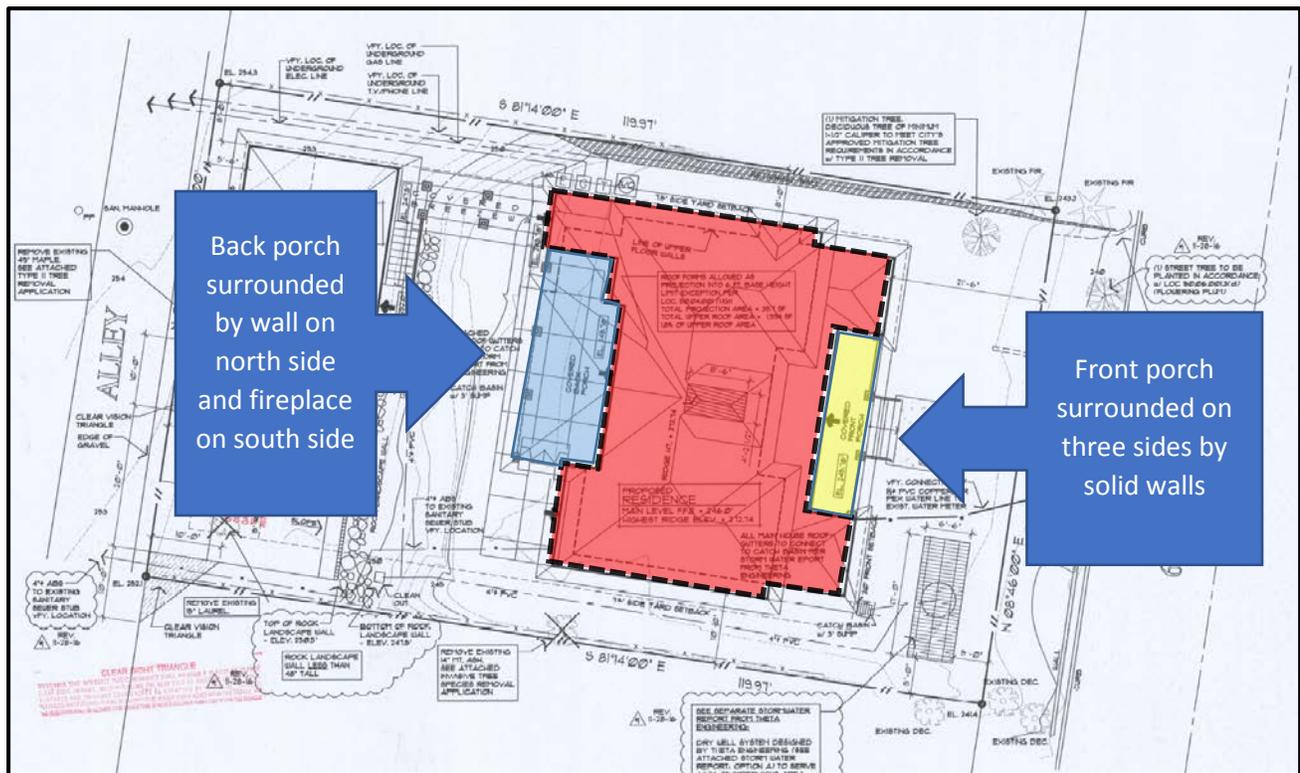
Floor Area

The gross building floor area excluding:

- a. Attic (the unfinished space between the ceiling joists of the top story and the roof rafters);
- b. Vent shafts;
- c. Courtyards;
- d. Garages, except as modified in:
 - i. The R-5 zone (LOC 50.04.001.2.d.i(1), for residential development);
 - ii. The R-6 zone (LOC 50.04.001.2.d.i(1), for outright permitted residential development);
 - iii. The R-7.5, R-10, and R-15 zones (LOC 50.04.001.1.d.i(1), for single-family dwellings);
- e. Allowable projections;
- f. Decks;
- g. Patios;
- h. Uncovered exit stairs; and
- i. Uncovered, above-grade driveways.

Item 24 (P): Floor Area, in conjunction with Height, is intended to control the overall volume of a building and accessory structures. However, enclosed or partially enclosed decks/patios can make a house appear larger by volume. Staff’s previous interpretation was that covered areas surrounded on three sides by walls count to floor area, regardless of whether there is a door or not. This interpretation was challenged in review of BP 499-16-05233 (864 6th), and the covered rear porch, which was enclosed by walls on three sides, was not included in FAR. Staff requests direction from the Commission regarding these interpretations. The dashed line and red coloring illustrate the walls of the dwelling; the blue coloring illustrates the rear covered patio, which is enclosed by dwelling walls on the north and east sides, and a wall that includes an outdoor fireplace on the south side.

Considerations: Percentage of “wall” that must be solid; notches in building planes, protected by eave (but not a porch/patio); covered porches (see below in yellow): set a maximum width, depth or overall square footage for exemption to FA. Some unconditioned space counts to FA (i.e., garages, sheds); some does not (i.e., attics).



Public Facilities and Utilities

~~Any and all on-site and off-site improvements to be accepted for ownership, maintenance and operation by the City, including but not limited to public parks, sanitary sewers, pump stations, water lines and hydrants, storm drain systems, streets, alleys, street lights, street name signs, traffic control signs and devices, and telecommunications facilities.~~

Public Facility or Utility, Major

Any public service improvement or structure developed by or for a public agency that is not defined as a minor public facility. This use includes but is not limited to substations; treatment plants, reservoirs and above-ground trunk lines for sewer, water or storm drainage systems; public schools;[;] parks;[;] libraries;[;] fire stations;[;] community centers;[;] police stations;[;] City administrative or other City office buildings; and; City motor pools or maintenance buildings.

Public Facility or Utility, Minor

The following public service improvements or structures developed by or for a public agency:

- a. Minor utility structures, ~~except substations, but~~ including poles, lines, pipes, collocated telecommunications facilities or other such facilities.
- b. Sewer, storm drainage, or water system structures, including reconstruction of existing facilities, pump stations, manholes, valves, hydrants or other portions of the collection, and treatment and distribution systems, ~~except treatment plants, reservoirs, or above-ground trunk lines.~~
- c. Street improvements within existing development including sidewalks, curbs, gutters, catch basins, paving, signs and traffic control devices and street lights.
- d. Transit improvements, such as shelters or pedestrian and bicycle safety improvements, located within public right-of-way or on public property.
- e. School improvements which will not increase the capacity of the school nor create additional traffic or other impact on the surrounding neighborhood.
- f. Park improvements which will not create additional motor or foot traffic impact on the surrounding neighborhood.

Item 25 (M): To streamline definitions, deletes definition of “Public Facilities and Utilities” which is very broad. The only usage of “Public Facilities/Utilities” in Chapter 50 is as a broad use category in the Use Tables, with the following sub-categories: Major, Minor, Telecom (new), Telecom (collocated). Staff reviewed all citations of “public facilities” and “public utility” in Chapter 50 and found no issues with the removal of this definition because the citations were either very broad (i.e., “public utility”) or very specific (i.e., “major public facility”).



TO: Lake Oswego Planning Commission

FROM: Leslie Hamilton, Senior Planner

SUBJECT: Annual Code Amendments - Work Session #1 (PP 17-0006)

DATE: August 31, 2017 **WORK SESSION DATE:** September 11, 2017

On September 11, 2017, the Planning Commission (Commission) will conduct a work session for proposed amendments to the Community Development Code (CDC), Chapter 50 of the Lake Oswego Code. The purpose of the work session is for the Commission to become familiar with and provide initial input on a list of amendments. These amendments were primarily identified by staff through use and application of the Code.

This report summarizes the code amendments and identifies issues for the Commission's input. As discussed during the Commission's 2017 goalsetting, staff expects to see a decline in the number of annual amendments as we continue to fine-tune the CDC, which was reorganized in 2012 (the current list contains 25 amendments, as compared to 33 amendments identified in 2016). However, code maintenance in response to City Council direction and changes in state law will continue to be an important part the City's planning program.

Code Maintenance (LOC Chapters 50.01 – 50.08, 50.10)

The Code Maintenance amendments are those that correct or add cross-references, clarify existing standards, and update requirements based on changes to other codes (e.g., Tree Code, Building Code, etc.). The maintenance items generally do not involve policy considerations and include the following:

1. List of Zoning Designations [LOC 50.01.004.1]: Add reference to the SW Overlay District to Table 50.01.004-1, Zoning Designations.
2. Use Specific Standard for "Parks, Public" [LOC 50.03.002, Use Table]: Fix for inadvertent change in Commercial Code Streamlining ordinance. Include a use-specific standard for "Parks, Public" stating that uses authorized under a Parks Master Plan are permitted uses.
3. Family Day Care and Preschools [LOC 50.03.002, Use Table and 50.03.002.5]: Family Day Cares with 16 or fewer children are permitted in residential zones, while preschools with 16 or fewer children are a Conditional Use. The impacts are similar, but a preschool

requires a much more thorough review. Analyze whether a Conditional Use Permit (CUP) is warranted for small preschools, and coordinate with State licensing requirements.

4. Accessory Structures and Uses/Guesthouse [LOC 50.03.004.1]: A guesthouse is defined as “an accessory structure of less than 400 square feet with no cooking or kitchen facilities, used for occasional temporary lodging of persons, and for which no payment or compensation is given in whole or part for lodging or use of the guest house.” Staff recommends deleting the definition and the reference to “guesthouse” as an accessory use. All accessory structures are limited to 600-800 square feet (size depends on height). Backyard studios can be used as temporary lodging but only for non-paying guests. Regardless of size, if an accessory structure has both kitchen and bath facilities, or is rented and used as a second dwelling unit, it is considered a Secondary Dwelling Unit and subject to a Minor Development review; these rentals must be for not less than 30 days per the definitions of Hotel (LOC 50.10.001) and Transient Lodging (LOC 24.02).
5. Temporary Uses/Farmers Market [LOC 50.03.005.5.a]: Currently, temporary markets are only allowed on Saturdays and Sundays, at one location each in the East End Commercial (EC) Zone, Industrial Park (IP) Zone, and Lake Grove Village Center (LGVC) Overlay. Staff recommends amending the Temporary Uses section to allow these temporary/seasonal markets on days other than Saturday and Sunday, subject to the same use limitations.
6. Special Street Setback Table [Table 50.04.002-1]: The CDC identifies 43 road sections in the city where a Special Street Setback applies; the Special Street Setback assures that adequate setbacks are available in the event of future street improvements, and the front setback is measured from the Special Street Setback line. Review the Special Street Setback table and edit as necessary to be consistent with the Transportation Systems Plan (TSP); coordinate with Engineering.
7. High Density Abutting Low Density [LOC 50.04.001.3.e.iii]: On lots zoned R-0, R-2, and R-3 (High Density Residential), setbacks are increased where there is an abutting lot that is low-density. However, under current code the zoning of abutting unincorporated properties is not considered. This standard should be expanded to apply where unincorporated lots, upon annexation, would be zoned low-density (R-7.5, R-10, or R-15).
8. Determination of Yards on a Through Lot [LOC 50.04.006.b]: A Through Lot is a lot that has frontage on two public streets, and the Development Code identifies the required setbacks on Through Lots as follows (emphasis added):
 - Unless the prevailing front yard pattern on adjoining lots indicates otherwise, front yards shall be provided on all street frontages. Where one of the front yards that would normally be required on a through lot is not in keeping with the prevailing yard pattern, the City Manager may waive the requirements for the normal front yard and substitute a special

yard requirement which shall not exceed the average of the yards provided on adjacent lots.

- In analyzing the prevailing street pattern, the standard references “adjoining” (not defined in the CDC) and “adjacent” (defined, and includes abutting lots as well as lots across the street). The section should consistently reference either “abutting” (defined as touching) or “adjacent” lots.
9. Glenmorrie Overlay [LOC 50.05.001.5.b.iii]: The Glenmorrie R-15 Overlay District has a provision that allows a neighbor to waive certain landscaping requirements. Per *Cosner v. Umatilla*, this is an improper delegation of city code authority; all other waivers were removed from the CDC in the 2016 Code Amendments.
 10. Roof Forms/Downtown Redevelopment Design (DRD) District [LOC 50.05.004.5.c]: Update the cross-reference in this section.
 11. Courtyard Dimensions, DRD District [LOC 50.05.004.8 and 13]: In the 2016 Code Amendment package, the requirements for courtyards in the DRD District were clarified; specifically, the amendment clarified that courtyards are required along any facade that is more than 200 feet wide, and that courtyards were not required on townhome developments. The Commission requested that staff return with amendments that further clarify the dimensions and amenities of the required courtyard. For context, public plazas in the LGVC Overlay are required to be 500 square feet, with no dimension less than 10 feet, and an open area large enough to accommodate a 13’ diameter circle. The provision of a public plaza in the LGVC Overlay is not required, but a site with a public plaza qualifies for certain exemptions and an easement is required to allow public access to the plaza. On the Lakeview Village development in the DRD District, three courtyards provide pedestrian connections to the parking garage; these courtyards range from 300 – 500 square feet in area. Staff requests direction on minimum size and amenities for DRD District courtyards.
 12. Parking Modifiers in the DRD District [50.05.004.9.a.i-iii and LOC 50.06.002]: Currently, parking modifiers applicable to the DRD District are located in two places: the general Parking Standards [Table 50.06.002-4] and the DRD District Parking Standards. It is confusing to both staff and the public to have the modifiers located in two places. Staff recommends amending the Table to identify all applicable DRD District modifiers in one place. This recommendation for code maintenance was first made in 2016, but the Commission chose not to include it in the 2015 Annual CDC Amendments based on public comment. The concern at the time was that a more thorough and substantive review of DRD District Parking Standards was needed. However, the City Council at its joint work session with the Planning Commission in January 2017, felt that revisions to the downtown parking standards were either unnecessary or a review of the standards should be deferred until after completion and occupancy of the Block 137 (Wizer) Redevelopment project. In the meantime staff recommends clarifying existing code.

13. Tree Removal in the Lake Grove Village Center Overlay [LOC 50.05.007.6.e]: The Lake Grove Village Center (LGVC) Overlay has standards for tree removal that subject smaller trees to regulation and require more mitigation than the Tree Code [LOC Article 55]. In light of recent amendments to the Tree Code, the following questions have arisen:

Size of Regulated Tree: LGVC Overlay requires mitigation for all trees 5" Diameter at Breast Height (DBH) or greater. The 2016 amendments to the Tree Code increased the size of regulated trees from 5" DBH to 6" DBH. To avoid confusion, staff recommends that the size of regulated trees in the LGVC Overlay increase to 6" DBH.

Significant Tree: The LGVC Overlay defines a "significant" tree as a tree that is equal to or greater than 18" DBH; the Tree Code defines a potentially "significant" tree as at least 15" DBH. To avoid confusion, staff recommends either standardizing the size or developing different terminology for the LGVC Overlay.

Mitigation: Tree mitigation in the LGVC Overlay escalates quickly because trees must be mitigated (either planted on site or a fee paid to the City) based on the total caliper inches removed. For example, removing one 27" tree in the LGVC Overlay requires nine 3-inch caliper trees to be planted or funded. The 2017 fee per tree is \$129/tree, or for these nine trees \$1,161. Elsewhere in the city, it's a 1:1 mitigation, and the fee for one 27" tree is \$129. (Mitigation fees go into a "Tree Fund" for tree planting and habitat conservation projects citywide.) Staff recommends review of the LGVC Overlay mitigation requirements.

Additionally, the LGVC Overlay requires all regulated trees to be mitigated, including invasive trees. Staff recommends not requiring invasive trees to be mitigated, unless the trees are street trees or were required as part of a landscaping plan; this would make the overlay consistent with the Tree Code.

Use of Caliper and DBH: The LGVC Overlay uses non-standard terminology for tree sizes. In the tree industry, Diameter at Breast Height, or DBH, refers to the size of a tree at maturity and is measured at 4.5 feet above the ground. "Caliper" refers to the size of a tree at the time it is purchased and is measured at 12" above the ground. In the LGVC Overlay, the term "caliper" is used many times when "DBH" is the correct reference.

14. Fence Waiver in LGVC Overlay [LOC 50.05.007.6.f.v(2)]: The LGVC Overlay has a provision that allows a neighbor to waive fencing requirements. Per *Cosner v. Umatilla*, this is an improper delegation of city code authority; all other waivers were removed from the CDC in the 2016 Code Amendments.
15. Resource Enhancement Projects in RC or HBA Districts [LOC 50.05.010.5.c.iii(7)]: Currently, tree removal for resource enhancement projects in sensitive lands districts is limited to the removal of invasive trees. This severely limits the ability to manage forested areas when tree removal may be beneficial (e.g., to prevent overcrowding or to remove diseased trees), particularly on large open space tracts. Staff recommends

adding the ability to remove native trees when recommended by a qualified resource professional.

16. On-Site Circulation – Bikeways, Walkways and Accessways/Applicability [LOC 50.06.003.3.a]: This standard requires on-site pedestrian circulation opportunities as well as connections to abutting properties and public walkways; walkways must meet the Americans with Disabilities Act (ADA) standards and pedestrian circulation routes through parking lots must be clearly demarcated. This amendment would clarify that this standard applies to subdivisions and planned developments. In the applicability statement, copied below with emphasis added, the placement of the wording “other than” makes it arguable as to whether the standard applies to subdivisions and planned developments.

Applicability: This section is applicable to all minor and major development involving the construction of a new structure other than a detached single-family dwelling, duplex, or accessory structure, and subdivisions and planned developments. This section is also applicable to modifications which increase the square footage of commercial, industrial, public use or institutional buildings by more than 10%. For the purposes of this section, an "existing building" is a building as it exists on February 19, 1998.

17. Fence Height Limitations [LOC 50.06.004.2]: In the proceedings for the 2015 Code Amendments, then-Commissioner LaMotte expressed concern about six foot fences along corner lot property lines in the First Addition Neighbors-Forest Hills (FAN-FH) neighborhood. He suggested that the Old Town fence height and design standards might be appropriate in First Addition. In Old Town, metal chain link fencing is prohibited in the front yard, and the height of a fence in the front yard setback is limited to four feet. In addition, all fencing in the front yard setback must be at least 50% transparent (Attachment A). These design standards are intended to ensure that fences and walls complement the Old Town Style. This amendment, if it is still desired, requires coordination with FAN-FH.
18. Certified Mail/Neighborhood Meeting [LOC 50.07.003.1.a.iv and others]: Certain public notices are required to be sent to property owners by certified mail. Staff has found that this requirement is not always effective, particularly if the contact is not home or does not visit the post office regularly. Staff suggests using regular mail or email. Applicants are already required to certify that they have mailed and posted required notices.
19. Extension of 180-Day Deadline for Completing an Application [LOC 50.07.003.1.h]: When a land use application is found to be incomplete, under state law the applicant has 180 days from the date of submittal to make the application “complete.” Current code authorizes one 180-day extension for completeness; however, that extension is not authorized by ORS 227.178(3); staff recommends removing it.

20. Subdivision Standards “Lock-in” Provision [LOC 50.07.007]: Per ORS 92.040(2), Application for Approval of Subdivision or Partition, holders of subdivision approvals may elect to develop under the development standards that were in effect when their project was approved. The affected standards include not just lot dimensional standards, but all land use regulations. *Bend Athletic Club v. City of Bend*, 239 Or. App. 89 (2010)(access to arterial street “locked-in”). It is incumbent on the local jurisdiction to establish the duration of the “lock-in” period for the subject standards. Per subsection (3), the lock-in period is 10 years if a jurisdiction does not establish a shorter time period; there is no statutory minimum for the lock-in period. The Code previously had a lock-in period of one year for certain standards, but that provision was removed because at that time subdivisions were reviewed as Planned Developments, which locked in the subject standards in perpetuity.
21. Residential Infill Design (RID) Review and General Design Variance Criteria [LOC 50.08.003.3.a.ii]: The General Design Variance Criteria require that the design “better accomplish the purposes, goals or objectives of the base district.” For the R-5, R-7.5, R-10 and R-15 zones, there is no stated purpose beyond providing housing at certain densities. The R-DD and R-6 zones have more detailed purpose statements, which include goals and objectives. Staff would like the Planning Commission to consider whether the criteria should be modified to better apply to RIDs in all districts. For example, should the low-density zones have more detailed purpose statements? Or do we rely on the purpose of the standard itself (i.e., a setback or a design standard) to gauge whether the criterion is met? This amendment relates to the Planning Commission’s Reserve List of project goals, which include reviewing the RID procedure for its effectiveness in protecting/enhancing neighborhood character. If the Commission would like to proceed with an amendment, this work would likely carry over into 2018.
22. General Design Variance Criteria Design Quality and Positive Unique Relationship with Nearby Structures [LOC 50.08.003.3.b]: During its review of the Downtown Redevelopment Design (DRD) District Variance Criteria (LU 17-0039), the Planning Commission recommended that staff “flag” LOC 50.08.003.3.b for a potential future amendment that would make subsections ‘a’ and ‘b’ applicable to design variances citywide. In the DRD District, as amended in LU 17-0039, these provisions require the applicant for a design variance to demonstrate that the proposal has, a) “exceptional ... quality [of] detailing, appearance and materials” and b) “positive unique relationships to nearby structures, views or open space, and streetscapes.” For design variances outside the DRD District (as amended) the code provides a choice between ‘a’ and ‘b’. The Commission’s intent is to provide a higher standard that addresses both design quality and nearby structures.

23. Breezeway Definition [LOC 50.10.003]: Under the definition of “Detached,” structures that are physically connected by a breezeway are still considered detached; any two structures that do not meet the definition of “detached” are, by default, considered “attached.” (See definition of Detached, below, with emphasis added.) The amendment that codified this exception was adopted in consideration of the wet weather in the Pacific Northwest, and that a small breezeway would not have a visual impact. A breezeway has been interpreted to mean only wide enough to use as a passageway, not a deck or outdoor living space; however, the CDC does not define the parameters of a breezeway. Staff recommends establishing the maximum width of a breezeway to distinguish it from a covered patio.

Detached: A horizontal separation of three ft. or more, between the subject structure and nearby structures. The separation shall be from eave to eave, or where there are no eaves, the separation shall be measured between the closest elements (excluding breezeways, air conditioning units, heat pumps, and similar attached or connected fixtures to the structure) of the two structures. (If the distance of separation is less than three ft. between two structures, they shall be deemed to be "attached.")

24. Floor Area Definition [LOC 50.10.003]: The Floor Area standard, in conjunction with Height, is intended to control the overall volume of a dwelling. However, courtyards and patios, which are excluded from the definition of Floor Area, can make a house appear larger. It is not unusual for courtyards and patios to be covered and/or semi-enclosed, which increases the apparent volume of the structure. Staff recommends clarifying the code such that covered courtyards and patios that are mostly enclosed count toward Floor Area. Staff will prepare a clear and objective standard for “mostly enclosed.”

25. Public Facility Definitions [LOC 50.10.003]: The CDC has separate definitions for Public Facilities and Utilities; Major Public Facility or Utility; and Minor Public Facility or Utility. Staff recommends reviewing the three definitions and uses of the terms in the CDC and streamlining if possible.

NON-CDC Amendments: LOC Chapter 55 (Tree Code) and Article 38.25 (Stormwater Management)

Amendments to chapters other than the Community Development Code (CDC), i.e., Chapter 50, are proposed which indirectly relate to the CDC. The amendments below are provided for informational purposes only; non-CDC amendments are not reviewed by the Planning Commission.

Stormwater Management [Article 32.25]: Include a cross-reference in the Stormwater Management Code to LOC 50.06.006.3, the Stormwater Management Standards for development review.

Tree Code [Chapter 55]: Staff has so far identified four potential amendments to the Tree Code. Other amendments may be identified as the City Council conducts a study session on the Tree Code this fall.

Expiration: Permits to remove dead trees and invasive trees do not have the 60-day expiration that applies to other tree permits. Staff recommends extending this to hazard permits; once a tree is found to be hazardous, it is unlikely, if not impossible, that the tree will become non-hazardous over time; the owner should be able to remove it on their own schedule.

Tree Protection: Add “metal” to LOC 55.08.030 to clarify that the tree protection fencing is required to be metal rather than plastic, wood, or any other material.

Definitions: Under the definition of “Removal,” clarify that a tree is considered “removed” if it is damaged to the point it qualifies for a Hazard permit. The current definition is tied to damage that causes the tree’s health to decline or to death. However, trees are sometimes damaged to the point they become unstable without the health of the tree declining; for example, this may result from the cutting of structural roots of the tree.

Native Trees/Master Plant List (MPL): The list of native species in the MPL is considered exclusive for “native trees” in the Tree Code. Staff recommends either adding more trees to increase mitigation choices where native trees are required, or expanding the language to clarify it is not an exclusive list of all “native” trees and that other native trees as identified in professional or academic sources are acceptable.

Attachments

Attachment A: Fences, Walls and Retaining Walls (LOC 50.06.004.2) Handout, 03/23/17