



## Flag Lots and Private Access Lanes, Draft #2 (LU 17-0052)

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Request for Public  
Comments for Preparation of  
Hearing Draft  
August 15, 2017

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The City is requesting public comments on this draft by **Thursday, August 31, 2017 (5:00 p.m.)**. Comments submitted by the deadline will be considered in preparing the Public Hearing Draft for the Planning Commission hearing tentatively scheduled for **Monday, October 9, 2017**. Please see the inside cover for information on how to submit comments.

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## HOW TO SUBMIT COMMENTS

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The Planning Department is accepting written comments to assist in the preparation of a Public Hearing Draft of proposed Community Development Code amendments addressing development of flag lots and private access lanes. This is the second Public Review Draft issued for this proposal. The prior draft, published on April 21, 2017 under File No. PP 16-0003, has been updated to reflect public comment and feedback from the Planning Commission.

All written comments received by **5:00 p.m., Thursday, August 31, 2017**, will be considered in preparing the Public Hearing Draft of the proposal for the **Planning Commission hearing tentatively scheduled for October 9, 2017**.

For more information or to submit comments, please contact:

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# I. INTRODUCTION

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## Proposal Summary

This is a request from the City of Lake Oswego for a text amendment to the Lake Oswego Community Development Code (CDC or City code), amending the standards for development of flag lots and private access lanes. The Planning Commission and City Council identified this as a 2017 Planning Commission Goal.

The purpose of the amendments is to streamline, update and clarify the code. This process is part of the City's ongoing effort to implement the Comprehensive Plan (adopted in 2014), pursuant to City Council policies on preserving the character of existing established residential neighborhoods, maintaining clear and objective standards for development, and avoiding unnecessary restrictions on property owners.

## Key Terms

### A Flag Lot is:

*A lot that:*

- a. Has the actual building site located behind another lot; and*
- b. Takes access from the street via:*
  - i. A driveway or access lane that is part of the lot and the width narrows to less than the minimum lot width for the zone; or*
  - ii. An access easement.*

### An Access Lane is:

*The area on private property that extends from the public right-of-way and is permitted to provide ingress and egress to the property (or properties) by applicable surface modes of travel.*

[LOC 50.10.003 Definitions]

## Key Dates

- Public Comments due on this draft – **August 31, 2017**
- Planning Commission Public Hearing (tentative) – **October 9, 2017**
- City Council Public Hearing (tentative) – **November/December, 2017**

The ordinance would go into effect thirty days after City Council adopts its final decision.

## II. BACKGROUND

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The Planning Commission (Commission) has conducted four work sessions (January 23, February 27, April 10, and June 12) and received one update (July 10) on the proposed amendments. The purpose of this Public Review Draft is to assist staff in identifying any comments, questions, or concerns from the public prior to the Commission holding a public hearing. The amendments require Measure 56 Notice, as the proposed reduction in the number of flag lots and increase in the amount of parking required on an access lane would limit the use of residential property.

This following summarizes the proposed amendments to the Community Development Code (Chapter 50) regarding Flag Lots and Access Lanes and identifies issues raised in the Planning Commission work sessions and in public comments on the prior Public Review Draft issued in April. These items correspond to the order in which they are addressed in Attachment A. Item #1 (Limit the Number of Flag Lots in the City) is new.

1. Limit the Number of Flag Lots [LOC 50.06.003.1.d]: The proposal contains options for limiting the number of flag lots served by a private access lane to between four and six lots. The proposal also requires additional parking for flag lot developments. Both issues arose from the Cedar Street subdivision in the Hallinan Neighborhood in 2014 [LU 14-0046], where some neighbors felt that a subdivision consisting of eight flag lots on one access lane did not fit the character of the neighborhood. If the City had limited the number of flag lots in that case as considered here, a public street would have been required to serve a subdivision containing eight lots. By requiring a public street for developments of more than four or six lots, this code change could reduce allowed development and test the City's compliance with State and Metro housing rules, as discussed below. There are also actions the City could take to mitigate any reduction on housing density that might result. For example, with the City Engineer's concurrence, the Planning Commission could consider adopting a minimum local street standard for small subdivisions that reduces the standard right-of-way width, which is currently 50 ft. By comparison, the standard width of a private access lane easement is only 20-30 ft.

The State Metropolitan Housing Rule ([OAR 660, Division 7](#)), adopted by the Land Conservation and Development Commission in 1981, is intended to "ensure opportunity for the provision of adequate numbers of needed housing units and the efficient use of land within the Metropolitan Portland (Metro) urban growth boundary, to provide greater certainty in the development process and so to reduce housing costs." It requires local jurisdictions in the Portland Metro area to maintain zoning for residential

densities averaging six, eight, or 10 dwelling units per net acre, and to provide buildable lands for a housing mix consisting of at least 50 percent attached and multifamily dwellings. The standard for Lake Oswego is 10 dwelling units per acre. “Multnomah County and the cities of Portland, Gresham, Beaverton, Hillsboro, Lake Oswego and Tigard must provide for an overall density of ten or more dwelling units per net buildable acre. These are larger urbanized jurisdictions with regionally coordinated population projections of 50,000 or more for their active planning areas, which encompass or are near major employment centers, and which are situated along regional transportation corridors.” (OAR 660-07-0035)

The Planning Commission has asked whether Lake Oswego could request a lesser density requirement, as the cities of Tualatin, West Linn and Wilsonville, for example, are required to plan for a density of only eight units per net acre. Further, the Lake Oswego Comprehensive Plan, updated in 2013, forecasts a population of only 45,693 within the Urban Services Boundary by 2035. However, it is not clear that the proposed amendment would take the City out of compliance with the Metropolitan Housing Rule. Staff is analyzing this as part of the current proposal. In its most recent analysis of planned density, the City demonstrated that it had land zoned for an average density of 10.2 dwelling units per net acre. (Lake Oswego Comprehensive Plan, 1994) If an updated analysis were to show the proposed amendments would take the City out of compliance with the State rule, it would either have to abandon the proposal or request an amendment to the rule, which could be difficult to achieve as it would affect other jurisdictions. However, even if successful in amending the State rule, the City would still have to comply with the Metro Urban Growth Management Functional Plan. Metro Code ([Chapter 3.07, Title 1](#)) prevents cities from reducing planned/zoned densities without commensurately increasing density elsewhere in the city. For these reasons, the City is seeking public input but has not yet committed to a preferred alternative for limiting the number of flag lots on a private access lane.

2. Access Lane Parking [LOC 50.06.003.1.d]: The minimum on-site parking requirement for single-family dwellings is one space per dwelling. Required parking cannot be within a front yard setback, though it is not uncommon for residential lots to have additional parking, for example in a driveway area in front of a garage. Where an access lane serves seven or eight dwelling units, additional parking for four standard vehicles must be provided either “on-lane” in small turnouts, or “off-lane” in a small parking lot. The proposal contains options for providing additional on-lane or off-lane parking for flag lot developments as small as two lots. This may affect allowable density in some

developments as the areas provided for access and parking are excluded from Net Developable Area. Staff is analyzing this as part of the current proposal.

3. Open Space/Serial Partition Sites [LOC 50.06.005.1]: As identified by the 2015 Audit of the Comprehensive Plan and CDC, the applicability statement for Open Space should be amended to apply to serial partition sites where one or more of the new lots could be further divided to achieve four or more lots in total. This will result in reduced development potential of some properties, but is intended to remove a loophole where developments of four or more lots have not been required to provide open space, the effect of which has been an increase in density above that which is envisioned by the Comprehensive Plan. The proposed amendments would require (1) all “serial partition” sites of 75,000 square feet or more to provide 20% open space, and (2) serial partition sites of less than 75,000 square feet to provide open space only if there are resource lands present on the site. These triggers are identical to the open space triggers for subdivisions. *Note: This amendment may no longer be necessary if the City Council limits the number of flag lots allowed on an access lane.*
  
4. Lot Line Adjustments and Flag Lots [LOC 50.07.007.2.a.ii]: The flag lot standards apply to all land divisions and lot line adjustments (LLA) that “create” a flag lot. Under the legal lot determination analysis, “creation” includes reconfiguring an existing flag lot through a Lot Line Adjustment; it also applies to an existing flag lot that is further partitioned (and thus has a new configuration). The first flag lot standards were codified in 1998; these standards were altered considerably in 2010, including amendments to setbacks and dwelling orientation. Applying the new standards to developed flag lots often creates non-conformities to setbacks and orientation. The proposed amendment exempts applicability of the current flag lots standards to existing, developed flag lots that are reconfigured through a Lot Line Adjustment. For flag lots approved pre-2010, any future development or remodel would have to comply with the dimensional standards (setbacks, lot coverage, building height, etc.) of the base zone, and the dwelling orientation requirements that existed when the flag lot was created.
  
5. Setbacks and Orientation [LOC 50.07.007.2.e.v(1)]: In 2010, the flag lot standards were amended to require the development sites to provide the opportunity for access lanes (existing or potential) to be extended onto an abutting property where such property may be further divided. The proposal would remove this requirement; access lanes would no longer have to be planned to connect to and through abutting developable properties (where impediments do not exist), as private access lanes do not provide

public access. Where connectivity for public access is needed, a future street plan may be required under a separate code provision.

Relatedly, whether or not there is development potential on the abutting lot, under current code the front yard setback on the flag lot is measured from the access lane or a projection of the access lane (see Figure 50.07.007-A: Flag Lot Front Yard). In situations where there is no opportunity to extend the access lane to abutting lots (e.g., railroad, existing development), or if the Code is amended to remove the requirement that access lanes in abutting developments be connected, the proposal would provide greater flexibility in setbacks and dwelling orientation on flag lots. This change will allow the City to prioritize setbacks where it makes the most sense. For example, dwellings would be placed so that the greater setback is where living spaces on abutting lots are next to one another, or where setbacks it facilitates protection of significant trees. The proposed amendments would apply the zone's front yard setback either to the property line that is parallel to the public street, or to the property line that is parallel to the orientation of the access lane, based on this analysis; the setback distribution would continue to apply to the remaining setbacks.

6. Garage Appearance and Location Standards [LOC 50.07.007.2.e.ii]: These standards are proposed to be removed entirely because garages on flag lots are never close enough to a public street for the standards to have any practical effect. As a comparison, the garage appearance and location standards for non-flag lots do not apply to garages that are located more than 60 ft. from a public street; garages on flag lots are generally located more than 60 ft. from the public street.
7. Flag Lot Front Setback [LOC 50.07.007.2.e.v]: Recent flag lot developments can appear crowded as viewed from the street or access lane, and the difference in front setback requirements between flag and non-flag lots may be contributing to this problem. This is due in part to the narrower width of private access lanes compared to standard city streets. As recommended by the Commission, the front setback, measured from the access lane, is proposed to increase from 10 ft. to 15 ft.
8. Setback Distribution on R-5 Flag Lots [LOC 50.07.007.2.e.v(3)]: In the Medium and High Density Residential Zones of R-5, R-3 and R-0, the cumulative side and rear setbacks must add to 45 feet on flag lots, which was 15 feet more than the cumulative sides and rear setbacks on non-flag lots. Staff could find no legislative history that this discrepancy was intentional, and the stated reason for the setback distribution was to

“provide flexibility while maintaining the same overall combined setback total.” The cumulative side and rear setbacks on non-flag lots in these three zones is 30 feet. The proposed cumulative of 35 feet, with nothing less than 7.5 feet, is closer to the non-flag distribution and will generally ensure that one yard is bigger (i.e., a rear yard). This amendment does not affect density.

9. Lot Coverage and Floor Area [LOC 50.07.002.e.vii]: This amendment clarifies that lot coverage and floor area are calculated on the net area (i.e., the area in the access lane/flag pole is deducted from the gross lot size). Presently, the access lane/flag pole area is netted out only for determining minimum lot area and lot coverage. On the Public Review Draft, the City received comments recommending that the dimensional standards for flag lots should be the same as for regular lots and comply with all standard code provisions and current zoning. The proposed amendments clarify that lot size, lot coverage and floor area are calculated based on the net lot area of the flag lot (i.e., the area in the flag pole or access lane is deducted from the flag lot area before lot size, lot coverage and floor area is calculated). This ensures that perceived lot size and dwelling size are the same on a flag lot as on a non-flag lot.
  
10. Flag Lot Screening Along Access Lane and Potential Conflict with Utilities [LOC 50.07.007.2.f.i]: Engineering staff noted the potential conflict between utilities (which are often placed within the access lane/easement) and the requirement of trees in the landscape buffers required along the access lane. The proposed amendment makes an exception to the tree requirement when utilities are present and the City Engineer determines that there will be a conflict.
  
11. Flag Lot Screening, Perimeter Fencing [LOC 50.07.002.f.iii]: The current flag lot standards require fencing along the side and rear yards of flag lots. When the orientation of flag lots was rotated in 2010, this standard was not amended to reflect the new orientation and often one lot line was not fenced. The proposed amendment would require fencing at the perimeter of the new flag lots (graphic provided in text).
  
12. Flag Lot Screening, Rear Yard Landscaping [LOC 50.07.00.2.f.iv]: The Flag Lot standards require a landscaping strip to be provided along the rear property lines of flag lots. As the flag lot orientation changed in 2010, the screening requirement was rotated to what was previously a side yard. A “rear” yard is always opposite a “front” yard, but because of the flexible/cumulative setback standard, the “rear” yard may not be the largest yard. The largest yard, which generally provides the activity area for the occupants, should

have the buffering. The proposed amendment requires the landscaping buffer to be provided along the largest side or rear yard of a flag lot.

### **III. CONCLUSION**

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The City is seeking public input on this proposal. Staff will consider all input received by August 31, in preparing the public hearing draft of the proposal for the Planning Commission hearing, which is scheduled for October 9, 2017.

### **IV. ATTACHMENT**

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**Attachment 1 – Proposed Code Amendments: Flag Lots and Access Lanes**

***NOTE: ATTACHMENT NOT INCLUDED, PLEASE REFER TO ATTACHMENT 2 OF ORDINANCE 2759 FOR PROPOSED CODE AMENDMENTS.***