

**BEFORE THE PLANNING COMMISSION
OF THE
CITY OF LAKE OSWEGO**

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A REQUEST FOR AMENDMENTS TO THE) LU 18-0035 – 1963
COMMUNITY DEVELOPMENT CODE FOR THE) (CITY OF LAKE OSWEGO)
PURPOSE OF CLARIFYING AND UPDATING) FINDINGS, CONCLUSIONS & ORDER
VARIOUS PROVISIONS, INCLUDING INCREASING)
SETBACKS ON LOTS ZONED HIGH DENSITY WHEN)
THEY ABUT LOTS THAT WILL BE ZONED LOW)
DENSITY UPON ANNEXATION; SOLAR CODE TREE)
TERMINOLOGY; SOLAR ACCESS PERMIT REMOVAL;))
UTILITY UNDERGROUNDING EXEMPTIONS; AND)
ADOPTING ORDINANCE 2797.

NATURE OF APPLICATION

The City of Lake Oswego is requesting approval of legislative amendments (Ordinance 2797) to the Lake Oswego Community Development Code (CDC) for the purpose of clarifying and updating various provisions, including increasing setbacks on lots zoned high density when they abut lots that will be zoned low density upon annexation; Solar Code tree terminology; Solar Access Permit removal; and utility undergrounding exemptions. Proposed amendments are to:

- LOC 50.04.001 – Dimensional Table
- LOC 50.04.003 – Exceptions, Projections, and Encroachments
- LOC 50.04.004 – Solar Adjustments
- LOC 50.05.004 – Downtown Redevelopment Design District
- LOC 50.05.005 – West Lake Grove Design District
- LOC 50.05.012 – Uplands R-10 Overlay District
- LOC 50.06.003 – Circulation and Connectivity
- LOC 50.06.004 – Site Design
- LOC 50.06.007 – Solar Access
- LOC 50.06.008 – Utilities
- LOC 50.07.003 – Review Procedures
- LOC 50.07.004 – Additional Submission Requirements
- LOC 50.10.003 – Definitions
- LOC 50.11.004, Appendix D – Lake Oswego Master Plant List

1 HEARINGS

2
3 The Planning Commission held public hearings and considered this application at its meetings
4 on October 8 and October 22, 2018. The following information was presented to the
5 Commission at its October 22, 2018 hearing and added to the record:

6 G-1 E-Mail from Leah Puhlman, dated 10/22/2018
7

8 CRITERIA AND STANDARDS

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10 A. City of Lake Oswego Comprehensive Plan

11 Community Culture – Civic Engagement, Policies 1, 2, 4 and 5

12 Land Use Planning – Land Use Administration, Policy D-1

13 Inspiring Spaces and Places – Goal 1, Policy 1(a)

14 B. City of Lake Oswego Community Development Code

15 LOC 50.07.003.3.c. Published Notice for Legislative Hearing

16 LOC 50.07.003.16.a Legislative Decisions Defined

17 LOC 50.07.003.16.b Criteria for Legislative Decision

18 LOC 50.07.003.16.c Required Notice to DLCD

19 LOC 50.07.003.16.d.iii Planning Commission Recommendation Required

20 LOC 50.07.003.16.e City Council Review and Decision
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22 CONCLUSION

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24 The Planning Commission concludes that the recommended Code Amendments in Attachment
25 2 (dated 08/30/18) of proposed Ordinance 2797 are in compliance with all applicable criteria.
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27 FINDINGS AND REASONS

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29 The Planning Commission (Commission) incorporates the staff report, dated August 30, 2018
30 (with all exhibits attached thereto), and the staff memo, dated October 4, 2018 (with all
31 exhibits attached thereto), as support for its decision.
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33 ORDER

34
35 IT IS ORDERED BY THE PLANNING COMMISSION of the City of Lake Oswego that:

- 36
37 1. The Planning Commission recommends that proposed Ordinance 2797, with Attachment 2
38 (08/30/18) [LU 18-0035] be approved by the City Council.
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40 I CERTIFY THAT THIS ORDER was presented to and APPROVED by the Planning Commission of
41 the City of Lake Oswego.

APPROVED: 10/22/18

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DATED this 22nd day of October, 2018.

Robert Heape
Robert Heape, Chair
Planning Commission

ATTEST:

ADOPTION OF FINDINGS AND ORDER - October 22, 2018

AYES: BAKER, BROCKMAN, HANSEN, HEAPE, PAPÉ, WARD
NOES: NONE
ABSTAIN: NONE
EXCUSED: SWEERS

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.

3. RESIDENTIAL HIGH DENSITY ZONES

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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 abuts a lot zoned R-6, 7.5, 10, or 15, or abuts a lot that would be zoned R-7.5, 10 or 15 upon annexation into the City per LOC 50.01.004.5, 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 1 (P): 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) [No reason to include R-6 in the “upon annexation” lots because there is no County land in FAN-FH.] The cross reference is to LOC 50.01.004.5, Comprehensive Plan Map Designations Automatically Applied Upon Annexations. This amendment was moved from amendments reviewed in 2017 because it requires Measure 56 (ORS 227.186) noticing, and can be bundled with other amendments in this package that require Measure 56 noticing.

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 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 therefor a special yard requirement which shall not exceed the average of the yards provided on ~~abutting~~adjacent lots.

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Item 2 (M): The term “adjacent” is replaced with “abutting” to be consistent with the term “abutting” in the first sentence (which itself was a clarification in the 2017 Amendments, Ordinance 2783).

50.04.004 SOLAR ADJUSTMENTS

1. EXEMPTIONS FROM SOLAR DESIGN STANDARD

A development is exempt from the requirements of LOC 50.06.007.1.d, Solar Design Standard, if the reviewing authority finds the applicant has shown that one or more of the following conditions apply to the site. A development is partially exempt from LOC 50.06.007.1.d to the extent the reviewing authority finds the applicant has shown that one or more of the following conditions apply to a corresponding portion of the site. If a partial exemption is granted for a given development, the remainder of the development shall comply with the solar access requirements.

a. Slopes

The site, or a portion of the site for which the exemption is sought, is sloped 20% or more in a direction greater than 45° east or west of true south, based on a topographic survey by a licensed professional land surveyor.

b. Off-Site Shade

The site, or a portion of the site for which the exemption is sought, is within the shadow pattern of off-site features, such as but not limited to structures, topography, or ~~non-exempt~~solar-unfriendly vegetation, which will remain after development occurs on the site from which the shade is originating.

- i. Shade from an existing or approved off-site dwelling in a single-family residential zone and from topographic features is assumed to remain after development of the site.
- ii. Shade from an off-site structure in a zone other than a single-family residential zone is assumed to be the shadow pattern of the existing or approved development thereon or the shadow pattern that would result from the largest structure allowed at the closest setback on adjoining land, whether or not that structure now exists.
- iii. Shade from off-site vegetation is assumed to remain after development of the site if: the trees that cause it are situated in a required setback; or they are part of a developed area, public park, or legally reserved open space; or they are in or separated from the developable remainder of a parcel by an undevelopable area or feature; or they are part of landscaping required pursuant to a development permit issued pursuant to this Code.
- iv. Shade from other off-site sources is assumed to be shade that exists or that will be cast by development for which applicable development permits have been approved on the date a complete application for the development is filed.

c. On-Site Shade

The site, or a portion of the site for which the exemption is requested, is:

- i. Within the shadow pattern of on-site features such as, but not limited to, structures and topography which will remain after the development occurs; or
- ii. Contains ~~non-exempt~~solar-unfriendly trees at least 30 ft. tall and more than six in. in diameter measured four ft. above the ground which have a crown cover over at least 80% of the site or relevant portion. The applicant can show such crown cover exists using a scaled survey or an aerial photograph. If granted, the exemption shall be approved subject to the condition that the applicant preserve at least 50% of the trees that cause the shade that warrants the exemption. The applicant shall file a note on the plat or other documents in the office of the County Recorder binding the applicant to comply with this requirement. The City shall be made a party of any covenant or restriction created to enforce any provision of this section. The covenant or restriction shall not be amended without written City approval.

2. ADJUSTMENTS TO SOLAR DESIGN STANDARD

The reviewing authority shall reduce the percentage of lots that must comply with LOC 50.06.007.1.d, Solar Design Standard, to the minimum extent necessary if it finds the applicant has shown one or more of the following site characteristics apply:

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c. Existing Shade

~~Non-exempt~~solar-unfriendly trees at least 30 ft. tall and more than six in. in diameter measured four ft. above the ground have a crown cover over at least 80% of the lot and at least 50% of the crown cover will remain after development of the lot. The applicant can show such crown cover exists using a scaled survey of solar-unfriendly~~non-exempt~~ trees on the site or using an aerial photograph.

- i. Shade from solar-unfriendly~~non-exempt~~ trees is assumed to remain if: the trees are situated in a required setback; or they are part of an existing or proposed park, open space, or recreational amenity; or they are separated from the developable remainder of their parcel by an undevelopable area or feature; or they are part of landscaping required pursuant to LOC 50.06.004, Site Design; and they do not need to be removed for a driveway or other development.
- ii. Also, to the extent the shade is caused by on-site trees or off-site trees on land owned by the applicant, it is assumed to remain if the applicant files in the office of the County Recorder a covenant binding the applicant to retain the trees causing the shade on the affected lots.

3. EXEMPTION FROM THE MAXIMUM SHADE POINT HEIGHT STANDARD

The City Manager shall exempt a proposed structure or ~~non-exempt~~solar-unfriendly vegetation from LOC 50.06.007.2.c, Maximum Shade Point Height Standard, ~~and LOC 50.07.004.9.e, Solar Site Plan Required,~~ if the applicant shows that one or more of the conditions in this section exist, based on plot plans or plats, corner elevations or other topographical data, shadow patterns, suncharts or photographs, or other substantial evidence submitted by the applicant.

a. Exempt Lots

When created the lot was subject to LOC 50.04.004.1 and 50.04.004.2, LOC 50.06.007.1.a through de, ~~and LOC 50.07.004.9.d,~~ and was not subject to the provisions of LOC 50.06.007.1.e, Protection from Future Shade.

b. Pre-Existing Shade

The structure or applicable ~~non-exempt~~solar-unfriendly vegetation will shade an area that is shaded by one or more of the following:

- i. An existing or approved building or structure;
- ii. A topographic feature;
- iii. A ~~non-exempt~~solar-unfriendly tree that will remain after development of the site. It is assumed a tree will remain after development if it:

- (1) Is situated in a required building setback;
- (2) Is part of a developed area or landscaping required by this Code, a public park or landscape strip, or legally reserved open space;
- (3) Is in or separated from the developable remainder of a parcel by an undevelopable area or feature; or
- (4) Is on the applicant's property and not affected by the development.

A duly executed covenant also can be used to preserve trees causing such shade.

c. Slope

The site has an average slope that exceeds 20% in a direction greater than 45° east or west of true south based on a topographic survey by a licensed professional land surveyor.

d. Insignificant Benefit

The proposed structure or ~~non-exempt vegetation~~ solar-unfriendly vegetation shades one or more of the following:

- i. An undevelopable area; or
- ii. The wall of an unheated space, such as a typical garage; or
- iii. Less than 20 sq. ft. of south-facing glazing.

e. Public Improvement

The proposed structure is a publicly owned improvement.

Item 3 (M): All references to “non-exempt” vegetation are changed to “solar-unfriendly” for better reading and to be consistent with Appendix 50.11.004.5, Solar Friendly Trees. Also references to Solar Access Permit are deleted, since Solar Access Permit section is deleted (LOC 50.07.004.9).

Item 4 (P): Two references to Solar Access Permit, LOC 50.07.004.9, are deleted because Solar Access Permit is proposed to be deleted in its entirety (see amendments under LOC 50.07.004.9, below).

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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12. STREET, ALLEY AND SIDEWALK DESIGN

Street, sidewalk and alley design shall safely and efficiently provide for vehicular and pedestrian travel while enhancing village character through compliance with the following design standards. These standards shall apply in addition to any other City requirements for street, alley or sidewalk design. In the event of a conflict, the provisions of this section shall control.

~~a. Compliance with Comprehensive Plan~~

~~Development shall comply with the Major Street System Policies contained in the Goal 12, Transportation Chapter of the Comprehensive Plan. Pursuant to this element, "A" Avenue and State Street are classified as major arterials, "B" Avenue from State Street to Fifth Street and First through Fifth Streets from "A" to "B" Avenues are classified as major collectors.~~

~~a.b. "A" Avenue~~

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~~b.e. Intersection Design~~

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~~c.d. Sidewalks~~

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~~d.e. Alleys~~

~~////////////////////~~

~~f. Undergrounding of Utilities~~

~~Utilities shall be placed underground where feasible.~~

~~e.g. Angle Parking~~

~~////////////////////~~

Item 5 (M): Compliance with Comprehensive Plan/DRD District [LOC 50.05.004.12.a]: The Transportation chapter of the old Comp Plan included a section titled “Major Street System Policies.” The new Connected Communities chapter of the Comp Plan does not. In fact, the updated Comp Plan does not include regulatory policies so the requirement to “comply with the Comp Plan policies” is meaningless. These sections are deleted for streamlining. Staff reviewed the FAN-FH Neighborhood Plan and could identify no regulatory policies in its Street Design and Traffic section (the Neighborhood Plans are adopted by reference into the Comp Plan).

Item 6 (M): Section (f) is deleted because utility undergrounding requirements/exceptions are addressed in LOC 50.06.008, Utilities.

13. CLEAR AND OBJECTIVE HOUSING STANDARDS FOR APPROVAL

a. Purpose

By compliance with the clear and objective standards of this article, the purpose of the Downtown Redevelopment District Design Standard, to guide the redevelopment of downtown Lake Oswego in a manner that creates a village character with 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 village character of the City of Lake Oswego, will be met.

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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.

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xiv.—Undergrounding of Utilities

~~Overhead utilities shall be placed underground, unless the City Engineer determines that undergrounding is not practical based upon site conditions.~~

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k. Street, Alley and Sidewalk Design

Purpose: Street, sidewalk and alley design should safely and efficiently provide for vehicular and pedestrian travel while enhancing village character through compliance with the following design standards. These standards shall apply in addition to any other City requirements for street, alley or sidewalk design. In the event of a conflict, the provisions of this section shall control.

~~i. Compliance with Comprehensive Plan~~

~~Development shall comply with the Major Street System Policies contained in the Connected Community Chapter of the Comprehensive Plan. Pursuant to this element, "A" Avenue and State Street are classified as major arterials, "B" Avenue from State Street to Fifth Street and First through Fifth Streets from "A" to "B" Avenues are classified as major collectors.~~

ii. "A" Avenue

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iii. Intersection Design

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~~iii~~iv. Alleys

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iv. Angle Parking

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Item 5 (M): Compliance with Comprehensive Plan/DRD District [LOC 50.05.004.12.a]: The Transportation chapter of the old Comp Plan included a section titled "Major Street System Policies." The new Connected Communities chapter of the Comp Plan does not. In fact, the updated Comp Plan does not include regulatory policies so the requirement to "comply with the Comp Plan policies" is meaningless. These sections are deleted for streamlining. Staff reviewed the FAN-FH Neighborhood Plan and could identify no regulatory policies in its Street Design and Traffic section (the Neighborhood Plans are adopted by reference into the Comp Plan).

Item 6 (M): Section (xiv) is deleted because utility undergrounding requirements/exceptions are addressed in LOC 50.06.008, Utilities.

50.05.005 WEST LAKE GROVE DESIGN DISTRICT

4. STANDARDS APPLICABLE TO THE ENTIRE WLK DESIGN DISTRICT

a. General Requirements

Development which occurs within the West Lake Grove Design District shall create an aesthetically pleasing entry into Lake Grove through the following design elements:

- i. Architecturally designed structures of high design quality that are in scale with the site, in proportion to similar buildings in the West Lake Grove Design District and which utilize a pleasing variety of harmonious earth and muted tone materials, colors, finishes and textures;
- ii. Conservation of mature Douglas fir trees and other significant trees to retain the landmark status imparted by these resources;
- iii. Orientation of building entrances shall conform to the provisions of LOC 50.06.001.5, Commercial, Industrial, and Multi-Family Development Standards for Approval;
- iv. Building design and orientation shall provide for effective screening and buffering of the subject properties from adjacent residential neighborhoods; and
- v. High quality designed landscapes involving native plant materials or those which have naturalized to the locale, which will grow to significant size and impart seasonal color and interest.

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~~k. Undergrounding of Utilities~~

~~All public and private utility services shall be placed underground.~~

kl. Building Design

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lm. Street and Pathway Lighting

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ma. Outdoor Storage

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ne. Stormwater Management

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Item 6 (M): Delete references to “undergrounding” because superfluous. Requirements are in Utilities, LOC 50.06.008. Subsections after have to be re-numbered.

9. CLEAR AND OBJECTIVE HOUSING STANDARDS FOR APPROVAL

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d. Standards Applicable to the Entire WLG Design District

i. Site Design Standards

(1) Purpose

Development which occurs within the West Lake Grove Design District shall achieve an aesthetically pleasing site and building design that:

- (a)** Conserves mature Douglas fir trees and other significant trees in order to retain the landmark status imparted by these resources;
- (b)** Through building design and orientation, provides effective screening and buffering of the subject properties from adjacent residential neighborhoods;
- (c)** Through high quality designed landscapes involving native plant materials or those which have naturalized to the locale, plants will grow to significant size and impart seasonal color and interest; and
- (d)** Incorporates landscape features which contribute to a unifying design theme and continuity within the West Lake Grove Design District, such as paving materials and textures, lighting, street furniture, signage and plant material selection, especially trees.

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~~**x. Undergrounding of Utilities**~~

~~All public and private utility services shall be placed underground.~~

xi. Building Design

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xii. Street and Pathway Lighting

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xiii. Outdoor Storage

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xiii.v. Stormwater Management

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Item 6 (M): Delete references to “undergrounding” because superfluous. Requirements are in Utilities, LOC 50.06.008. Subsections after have to be re-numbered.

50.05.012 UPLANDS R-10 OVERLAY DISTRICT

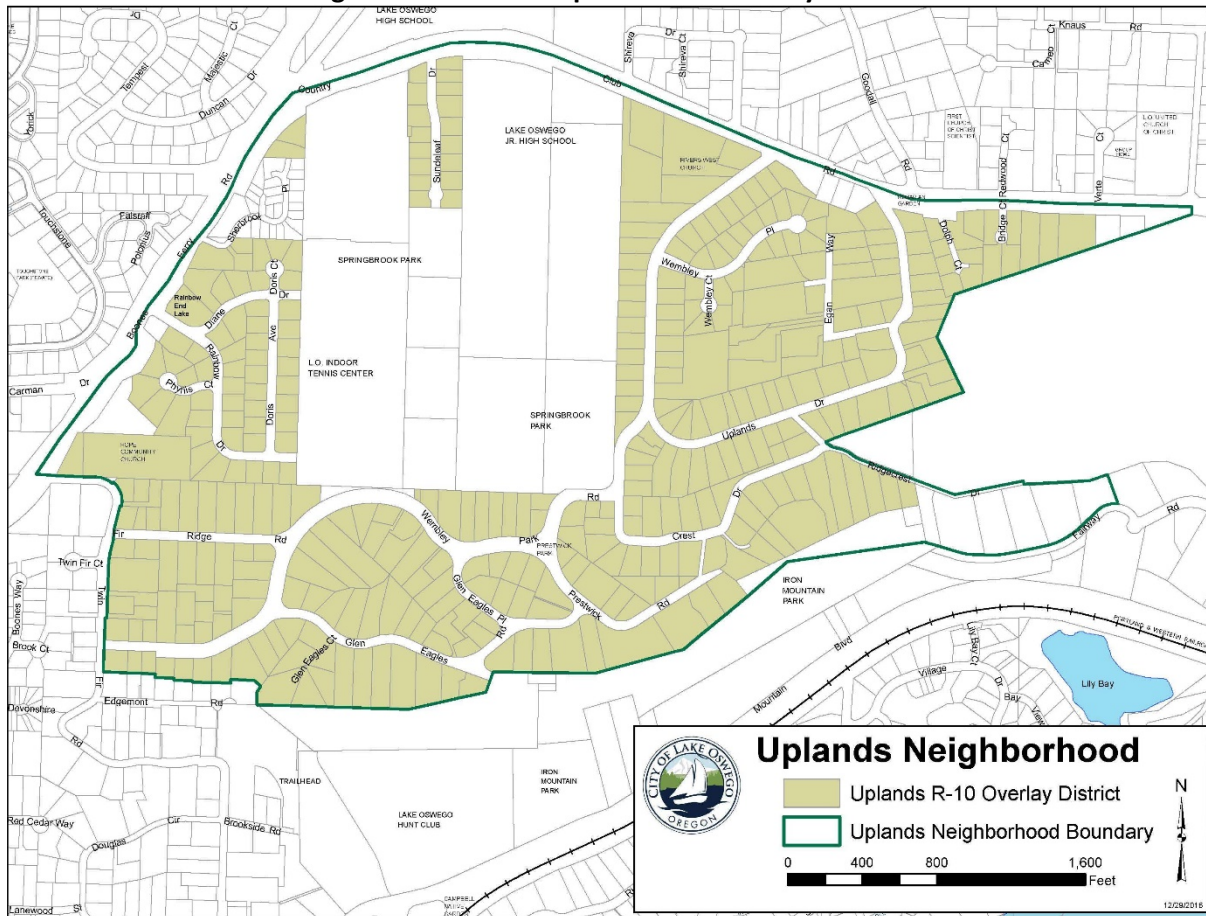
1. PURPOSE

The purpose of the overlay is to ensure that development in the overlay district promotes the unique character of the Uplands neighborhood as described in the Uplands Neighborhood Plan.

2. APPLICABILITY

This section applies to lands within the Uplands R-10 Overlay District, as shown on Figure 50.05.012-A: Uplands R-10 Overlay District.

Figure 50.05.012-A: Uplands R-10 Overlay District



3. RELATIONSHIP TO OTHER STANDARDS

To the extent that any requirement of this overlay imposes a regulation relating to the same matter as a regulation applicable to the residential low density zones, flag lots, or circulation and connectivity, this section shall prevail.

4. FRONT YARD SETBACK AVERAGING

a. Applicability

The front yard setback averaging required by this subsection 4 shall apply to lots with a lot depth greater than 120 ft.

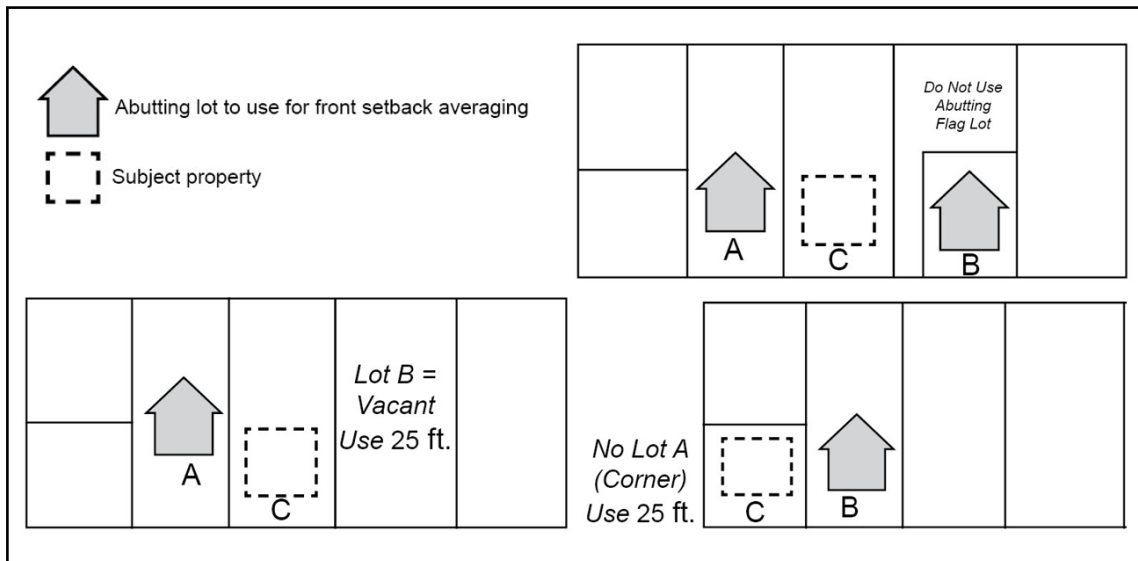
Exemption: Triangular lots and flag lots are exempt from the requirements of this subsection 4.

b. Front Yard Setback Averaging

Front yard setbacks shall conform to the averaging standards in Table 50.05.012-1.

TABLE 50.05.012-1 – FRONT YARD SETBACK AVERAGING		
	Non-corner Lot	Corner Lot
Front Yard Setback [1][2] (See Figure 50.05.012-B)	Average of the setbacks of the closest buildings on the abutting lots on the same block face	Average of 25 ft. and the setback of the closest building on the abutting lot on the same block face
Minimum Front Yard Setback	Where the average is less than 25 ft.: The minimum setback is 25 ft. Where the average is more than 40 ft.: The minimum setback is 40 ft.	
[1] Abutting flag lots shall not be considered in determining the average. The setback of the next abutting non-flag lot shall apply. See Figure 50.05.012-B. [2] If the lot abuts a vacant lot, or there are no abutting lots on the same block face, the setback of the underlying zone shall apply.		

Figure 50.05.012-B



5. FLAG LOTS

[In addition to the standards in Sections 6 and 7 of LOC 50.05.012, the following standards apply to flag lots.](#)

- a. Only one flag lot may be created behind a non-flag lot. No flag lot may be created from an existing flag lot.

b. Access

Access lanes shall not extend or project through the flag lot to abutting property.

c. Lot Configuration Requirements

i. Determination of Front Yard

The front yard of a flag lot is measured from the lot line that is most parallel and closest to the street.

d. Building and Site Design Standards

i. Building Orientation

There is no building orientation requirement.

ii. Maximum Structure Height

(1) — In no case shall the maximum height of structures established pursuant to LOC 50.07.007.2.e.iii exceed 30 feet.

~~(1)~~(2) The additional height allowed pursuant to LOC 50.07.007.2.e.iii(4) and LOC 50.04.001.1.g is not permitted.

iii. Setback Requirements

The flag lot setback requirements in LOC 50.07.007.2.e.v. shall not apply within the Uplands R-10 Overlay District. All setbacks shall be those established by this overlay and the underlying R-10 zone.

6. LIMITATION ON IMPERVIOUS SURFACES

- a. No more than 50% of the lot may be covered with impervious surfaces.
- b. The area between the front lot line and the nearest edge of the building footprint shall not be covered by more than 30% of impervious surface.

7. STRUCTURE DESIGN

a. Maximum Permitted Height

The maximum permitted height for primary structures, regardless of slope, is 30 ft.

b. Height – Additional Standards

- i. The additional height allowed pursuant to LOC 50.04.001.1.g is not permitted.

c. Side Yard Setback Plane – Interior Yards

- i. Except as set forth in LOC 50.06.001.2.e.ii, the side profile of a structure shall fit behind a plane that starts at the side property line and extends upward to 12 ft. and slopes toward the center of the lot at a slope of 6:12 up to the maximum allowed height at the peak.
- ii. Roof forms may penetrate into the side yard setback plane per LOC 50.06.001.2.e.i.

8. ON-SITE CIRCULATION – DRIVEWAYS AND FIRE ACCESS ROADS

a. Driveway Approaches – Locational Limitations and Restrictions

Only one driveway access point shall be permitted along each lot frontage.

Item 7 (M): The Uplands R-10 Overlay is intended to protect the existing neighborhood character of primarily one and 1 ½ story houses. The overlay was also intended to prevent new “uphill” construction from looming over existing residences by prohibiting height increases for slope and roof projections. The overlay text is amended to clarify that the maximum height of 30 feet, the prohibition of the roof height exception, and the limitations on impervious surfaces apply to both regular lots and flag lots within the Uplands R-10 Overlay District. This amendment requires Measure 56 (ORS 227.186) noticing.

50.06.003 CIRCULATION AND CONNECTIVITY

4. STREET CONNECTIVITY

c. Standards for Approval of Development Which Requires the Construction of a Street

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- v. Access lanes may be used to serve up to three~~eight~~ dwelling units~~s~~. ~~They shall be designed to provide connections between properties that develop through the partition process.~~

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Item 8 (M): The recent Flag Lot and Access Lane amendments limited access lanes to serving a maximum of three lots, and removed the requirement that access lanes be designed to connect to abutting properties. Therefore, the reference in the Street Connectivity Standard to access lanes that serve eight dwelling units is corrected.

50.06.004 SITE DESIGN

3. LIGHTING STANDARDS

a. Applicability

- i. This section is applicable to all minor or major development which results in increased use of public and private streets, public pathways and accessways, or parking lots, and lots in the PF and PNA zones.
- ii. Temporary lighting for theatrical, television, and performance areas, and lights associated with special events are not subject to this section if no "development" occurs.

b. Standards for Approval

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iii. Outdoor Lighting in PF and PNA Zones

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(a) All outdoor lighting shall comply with either the prescriptive option or the performance option, below. The applicant may be required to pay for the services of a qualified professional civil or electrical engineer to review such submittals and the cost thereof shall be an additional fee charged to the applicant.

(i) Prescriptive Option

If the lighting is to comply with this prescriptive option, the installed lighting shall meet all of the following requirements:

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(ii) Performance Option

If the lighting is to comply with this performance option, the proposed lighting plan demonstrating compliance with the following standards shall be submitted by the applicant for review and approval by the City Engineer, and the City Engineer's decision shall be the final decision of the City:

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(B) The maximum light level at any property line shall be no greater than the values in Table 50.06.004-4: Performance Method, as evidenced by a complete photometric analysis including horizontal illuminance of site and vertical illuminance on the plane facing the site up to the mounting height of the luminaire mounted highest above grade. The City Engineer may accept a photometric analysis report, demonstration or sample, or other satisfactory

confirmation that the luminaire meets the shielding requirements of Table 50.06.004-1: Maximum Wattage and Required Shielding. Luminaires shall not be mounted so as to permit aiming or use in any way other than the manner maintaining the shielding classification required herein.

Exception 1: If the property line abuts a public right-of-way, the analysis may be performed at the property boundary across the public right-of-way from the site.

~~Exception 2: If the abutting property owner agrees in writing to waive subsection 3.b.iii(7)(a)(ii)(B) of this section, and such consent is recorded in the official records of the county in which the abutting property is located, the maximum light level analysis shall be measured at the setback line of the abutting parcel.~~

Exception ~~2~~3: If unique site characteristics (topography, differences in grade between the subject property and the abutting parcel) make compliance impractical with the maximum light level requirements, an exception to this subsection may be granted by the City Engineer. The City Engineer may impose conditions of approval to mitigate any negative impacts resulting to the abutting parcel, based on best lighting practices and available lighting technology.

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Item 9 (M): Per *Cosner v. Umatilla*, delete the option for an abutting property owner to waive maximum light levels at the property line.

v. Street Lighting

(1) Street lighting installations shall achieve criterion values listed in Table 50.06.004-6.

TABLE 50.06.004-6: CITY STANDARD CRITERIA FOR STREET AND ROADWAY LIGHTING (FOOT-CANDLES – FC)					
	PNA (Natural Area) Zone	R-3, R-5, R-7.5, R-6, R-10, and R-15, R-DD, PNA (Developed Park Area), PF and R-W Zones	R-0, R-2, WLG R-2.5, I, IP, and CR&D Zones	GC, NC, MC, EC, HC, OC, WLG OC, WLG RMU and CI Zones	Special Exception LOC 50.06.004.3.b.iv
LOCAL STREETS	Not permitted	Light Levels at Intersections only*	Light Levels	Light Levels	Light Levels
Avg: Light Level	N/A	0.3 fc	0.3 fc	0.4 fc	0.4 fc
Avg: Min. Uniformity	N/A	6:1	6:1	6:1	6:1
Max: Min. Uniformity	N/A	40:1	40:1	40:1	40:1
NEIGHBORHOOD COLLECTORS	Not permitted	Light Levels at Intersections only*	Light Levels	Light Levels	Light Levels
Avg: Light Level	N/A	0.3 fc	0.4 fc	0.6 fc	0.6 fc
Avg: Min. Uniformity	N/A	4:1	4:1	4:1	4:1
Max: Min. Uniformity	N/A	20:1	20:1	20:1	20:1
MAJOR COLLECTOR/MINOR ARTERIAL	Not permitted	Light Levels	Light Levels	Light Levels	Light Levels
Avg: Light Level	N/A	0.3 fc	0.4 fc	0.6 fc	1.0 fc
Avg: Min. Uniformity	N/A	4:1	4:1	4:1	4:1
Max: Min. Uniformity	N/A	20:1	20:1	20:1	20:1
MAJOR ARTERIALS	Street lighting standards for major arterials shall be determined by the City Engineer, who may require an independent engineering study to determine the appropriate lighting system.				
* Luminaires only within 150 ft. of the center point of an intersection.					

(a) Exception: Federal or state requirements that require a higher illumination value than required by this Code.

(2) Street lighting systems shall be designed using the IES "Classical" horizontal foot-candle method per IES/ANSI RP-8-01, and as follows:

- (a) The applicant shall demonstrate compliance with Table [50.06.004-6](#) by submitting to the City Engineer point-by-point calculations assuming 65% light loss factor for metal halide and 80% for LED, high pressure sodium, tungsten, fluorescent and induction lamp sources. Submitted street lighting plans shall indicate luminaire types and locations and provide isocandle plots including statistical summaries of roadway lighting.
- (b) Luminaires shall be fully shielded.
 - (i) Exception: Historic or architectural street lights located in a designated design district.
- (c) The City Engineer may require street lighting that deviates from Table [50.06.004-6](#): City Standard Criteria for Street and Roadway Lighting upon finding that a particular street, or portion thereof, warrants a higher level of illumination to protect the public safety and welfare. The City Engineer's decision shall be the final decision of the City. The discouragement of property damage crime is not a sufficient factor in and of itself to warrant the deviation from Table [50.06.004-6](#).

Item 10 (M): Headings are added to the table to clarify that the lighting standards apply along street frontages, not just at intersections.

50.06.007 SOLAR ACCESS

1. SOLAR ACCESS FOR NEW DEVELOPMENT

a. Purpose

The purposes of the solar access provisions for new development are to ensure that land is divided so that structures can be oriented to maximize solar access and to minimize shade on adjoining properties from structures and trees.

b. Applicability

The solar design standard in LOC [50.06.007.1.d](#) shall apply to [subdivision](#) applications ~~for a development that~~ create lots intended for single-family detached dwellings in any zone, except to the extent the reviewing authority finds that the applicant has shown one or more of the conditions listed in LOC [50.04.004.1](#), Exemptions from Solar Design Standard, and LOC [50.04.004.2](#), Adjustments to Solar Design Standard, exist and exemptions or adjustments provided for therein are warranted.

~~c. Development Review~~

~~The review procedures for a solar access permit are located in LOC 50.07.004.9, Solar Access Permit.~~

cd. Solar Design Standard

At least 80% of the lots in a development subject to this section shall comply with one or more of the options in this section. In order to be included in the 80% requirement a lot must also comply with LOC 50.06.007.1.e.

i. Basic Requirement

A lot complies with this section if it:

- (1) Has a north-south dimension of 90 ft. or more; and
- (2) Has a front lot line that is oriented within 30° of a true east-west axis.

ii. Protected Solar Building Line Option

In the alternative, a lot complies with this section if a solar building line is used to protect solar access as follows:

- (1) A protected solar building line for the lot is designated on the plat, or documents recorded with the plat; and
- (2) The protected solar building line for the lot is oriented within 30° of a true east-west axis; and
- (3) There is at least 70 ft. between the protected solar building line on the lot to the north and the middle of the north-south dimension of the lot to the south, measured along a line perpendicular to the protected solar building line; and
- (4) There is at least 45 ft. between the protected solar building line and the northern edge of the buildable area of the lot, or habitable structures are situated so that at least 80% of their south-facing wall will not be shaded by structures or ~~non-exempt~~[solar-unfriendly](#) vegetation.

iii. Performance Option

In the alternative, a lot complies with this section if:

- (1) Habitable structures built on the lot will have their long axis oriented within 30° of a true east-west axis and at least 80% of their ground floor south wall protected from shade by structures and ~~non-exempt~~[solar-unfriendly](#) trees; or

- (2) Habitable structures built on the lot will have at least 32% of their glazing and 500 sq. ft. of their roof area which faces within 30° of south and is protected from shade by structures and ~~non-exempt~~solar-unfriendly trees.

de. Protection from Future Shade

Structures and ~~non-exempt~~solar-unfriendly vegetation must comply with the Solar Balance Point provisions, LOC 50.06.007.2, for existing lots if located on a lot that is subject to the solar design standard in LOC 50.06.007.1.d, or if located on a lot south of and adjoining a lot that complies with the solar design standard.

Item 11 (P): Delete applicability to partitions and Lot Line Adjustments (LLAs “create” lots). Solar Access standard will only apply to subdivisions for single-family residential developments.

Item 3 (M): Change all references from “non-exempt” to “solar-unfriendly.”

Item 4 (P): Delete Solar Access Permit (SAP being deleted in its entirety).

2. SOLAR BALANCE POINT

a. Purpose

The purposes of this section are to promote the use of solar energy, to minimize shading of structures by structures and accessory structures, and, where applicable, to minimize shading of structures by trees. Decisions related to these provisions are intended to be ministerial and not subject to a public hearing and are to be processed as a part of the consideration of the minor development permit for the affected structures.

b. Applicability

This section applies to an application for a building permit for all structures in the R-7.5, R-10 and R-15 zones and all single-family detached structures in any zone, except to the extent the City Manager finds the applicant has shown that one or more of the conditions listed in LOC 50.04.004.3, Exemption from the Maximum Shade Point Height Standard, and LOC 50.04.004.4, Adjustments to the Maximum Shade Point Height Standards, exists, and exemptions or adjustments provided for therein are warranted. In addition, ~~non-exempt~~solar-unfriendly vegetation planted on lots subject to the provisions of LOC 50.06.007.1.e, Protection from Future Shade, shall comply with the maximum shade point height standard. Solar plan procedures are located in LOC 50.07.004.9.

c. Maximum Shade Point Height Standard

The height of the shade point shall comply with either subsection 2.c.i or ii of this section.

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ii. Performance Option

The proposed structure, or applicable ~~non-exempt~~solar-unfriendly vegetation, will shade not more than 20% of the south-facing glazing of existing habitable structure(s), or, where applicable, the proposed structure or ~~non-exempt~~solar-unfriendly vegetation complies with LOC 50.06.007.1.d.ii or iii. If the protected solar building line is used, ~~non-exempt~~solar un-frieindly trees and the shade point of structures shall be set back from the protected solar building line two and one-half ft. for every one ft. of height of the structure or of the mature height of ~~non-exempt~~solar-unfrieindly vegetation over two ft.

d. Analysis of Allowed Shade on Solar Feature

- i. The applicant is exempt from this section if the lot(s) south of and adjoining the applicant’s property is exempt from LOC 50.06.007.2.c, Maximum Shade Point Height Standard.
- ii. Applicants shall be encouraged to design and site a proposed habitable structure so that the lowest height of the solar feature(s) will not be shaded by buildings or ~~non-exempt~~solar-unfriendly trees on lot(s) to the south. The applicant shall complete the following calculation procedure to determine if the solar feature(s) of the proposed structure will be shaded. To start, the applicant shall choose which of the following sources of shade originating from adjacent lot(s) to the south to use to calculate the maximum shade height at the north property line:
 - (1) Existing structure(s) or ~~non-exempt~~solar-unfriendly trees; or
 - (2) The maximum shade that can be cast from future buildings or ~~non-exempt~~solar-unfriendly trees, based on Table 50.06.007-3. If the lot(s) to the south can be further divided, then the north-south dimension shall be assumed to be the minimum lot width required for a new lot in that zone.

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Item 3 (M): Change all references from “non-exempt” to “solar-unfriendly.”

50.06.008 UTILITIES

4. STANDARDS FOR CONSTRUCTION

- a. Utility easement widths shall be the minimum width possible to facilitate utility installation and maintenance, and shall be a minimum of ~~ten~~ fifteen ft. (~~five~~7.5 ft. on each side) in width on

easements not adjacent to a street right-of-way per LOC 42,18.1030.1.c, unless otherwise approved by the City Engineer.

- b. Utility construction within easements shall minimize disturbance to existing conditions, especially trees and other vegetation.
- c. Any disturbed areas within easements shall be restored to a condition similar to the condition prior to construction, including the replacement of plants of similar species as those removed or damaged. Replacement trees shall be of similar species and be a minimum of one and one-half in. caliper.
- d. Utilities to the development and existing utilities along the development's street frontage shall be installed underground ~~(unless exempted by the City Manager~~ for any of the following reasons):

~~i. Specific exemptions are as follows:~~

~~(1)i.~~ Developments which need multi-phase voltages or high kilo volt amperes (kVA) demands may develop with pad transformers where underground transformers are not feasible. Pad mounted transformers shall be buffered from sight by landscaping or other suitable methods.

~~(2)ii.~~ Pad mounted transformers are allowed in ~~subdivisions~~ ~~major single family developments~~, but shall be buffered from sight by landscaping or other suitable methods.

~~(3)iii.~~ Above ground telephone and cable television junction boxes are allowed.

iv. Accessory Dwelling Units (ADUs): No undergrounding of existing or new utilities along street frontages is required. Undergrounding of new on-site utilities is required for ADUs that add floor area. (ADU) Developments: Existing and new utilities along street frontage are exempt, but new facilities on-site to the ADU shall be installed underground.

v. Remodel of Structures: No undergrounding of existing or new utilities along street frontages is required. Undergrounding of new on-site utilities is required for building additions that add floor area, per LOC 45.09.075.

vi. Land Division in Residential Zone: If the parcel of land that is the subject of a land division ("parent parcel") is less than four times the minimum lot area for the residential zone (regardless of the actual number of lots created by the land division), existing utilities along the street frontage are exempt, but new utilities to development within the area of the parent parcel shall be installed underground.

vii. Deferred Undergrounding: Any requirement to underground existing utilities along the street frontage of a development may be deferred by the City Manager upon finding that undergrounding of utilities is not practicable at the time. In lieu of then undergrounding, the

owner shall execute a covenant, approved by the City Attorney, and recorded in the official records of the County where the real property is located, binding upon the parcels created by the land division of the parent parcel, and any later land divisions of those parcels:

(1) Waiving the right to remonstrate regarding the formation of a local improvement district to underground utilities; and

(2) Obligating the owner(s) to underground existing utilities along the frontage of the parent parcel when the City Manager determines that it is now practicable to underground the frontage utilities. The covenant shall provide that the cost of undergrounding is a joint and several obligation of the owner(s), and to provide for the right of any owner to perform the undergrounding and to lien the other properties for the cost. [If the owner(s) fail to perform the undergrounding as required, the City shall have the right to undertake the undergrounding and to lien all properties jointly and severally for the cost of the undergrounding, including an additional 20% for administrative cost.]

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Item 6 (P): This standard requires that all development connecting to utilities must place the utilities underground. The Building Code [LOC 45.09.075] requires underground for new structures, and for remodels refers to the requirements of minor development review under LOC Ch. 50. The scope of some small developments – such as remodels and Accessory Dwelling Units (ADUs) that do not add floor area– often does not warrant the cost and disruption of undergrounding on-site. Additionally, a partition where the parent parcel is less than four times the minimum lot size, regardless of the number of actual lots created in the partition, do not warrant undergrounding along the street frontage because there is so little to gain aesthetically. In some cases, undergrounding of overhead utilities may actually require the installation of more utility poles, defeating the code’s purpose. The amendments also add the ability in any circumstance to defer undergrounding existing utilities along the street frontage when it is not then practicable. There are references to “undergrounding” in the WLG and DRD Districts that should be deleted because they are redundant to the standards in LOC 50.06.008.

The amendment also increases the width of utility easements to 15 feet total, to be consistent with LOC Chapter 42, in order to provide sufficient maneuverability for maintenance vehicle access when the utility is not adjacent to a street.

50.07.003 REVIEW PROCEDURES

1. APPLICATION

a. Application for Development

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g. Determination of Completeness

- i. The purpose of this subsection 1.g.i and subsections 1.g.ii and iii of this section is to codify the ~~"120-Day Rule"~~ statutory maximum review period in the applicable ORS 197.311 (Final Action on Application for Certain Residential Developments Required Within 100 Days) or 227.178 (Final Action on Certain Applications Required Within 120 Days) (referred to herein as the "Maximum Review Period Rule.") In the event of a difference in procedure for determining when an application is complete, the provisions of then ORS 197.311 or 227.178 shall supersede any inconsistent provisions of this subsection 1.g.i, and subsections 1.g.ii and iii of this section. This subsection 1.g.i, and subsections 1.g.ii and iii of this section, are applicable only to those minor and major development applications that are subject to the requirements of the ~~120-Day Rule~~ Maximum Review Period Rules under state law.

The City Manager shall review the application and determine whether it is complete. The City Manager shall mail a written notice of such determination within 30 days of the date of filing of the application. If the City Manager determines that the application is incomplete, the City Manager shall inform the applicant in the written notice of the additional information necessary to make the application complete. The application shall be complete at such time as:

- (1) All of the missing information is submitted;
- (2) Some of the missing information is submitted and written notice from the applicant that no other information will be provided; or
- (3) Written notice from the applicant is submitted that none of the missing information will be provided.

The applicant shall have 180 days to complete the application.

If the City Manager fails to mail notice of the determination within 30 days from the date of filing of an application the application shall be deemed complete on the 31st day following filing of the application for the purposes of the applicable Maximum Review Period ~~120-Day Rules~~.

- ii. When the City Manager determines the application is complete, the City Manager shall inform the applicant of the completeness by mail. A copy of the completeness letter shall also be mailed to the affected neighborhood associations identified in LOC 50.07.003.1.f.iii(1)(a) and (b). Within ten days of the mailing of the notice of completeness to the respective neighborhood associations, the chair, or the chair's representative, of any of the noticed neighborhood associations may request a meeting with the City Manager to discuss the application. The purpose of this meeting is to identify issues. No evidence or argument presented at this meeting shall be deemed to be made part of the record; any evidence or argument shall be submitted in the manner required by LOC 50.07.003.3, Public Notice/Opportunity for Public Comment, or LOC 50.07.003.15.b.i, and LOC 50.07.003.4.a, Conduct of the Hearing. If a meeting is requested, the applicant shall be notified of the meeting and invited to attend the meeting.

- iii. A final decision on an application, including resolution of all appeals, shall be rendered within [the applicable Maximum Review Period Rules](#) ~~120 days~~ after the application is deemed complete pursuant to ORS [197.311 or 227.178](#) (~~referred to herein as the "120 Day Rule"~~).
- iv. Nothing in this section shall be deemed to be a limitation on the City's ability to render a final decision on a land use application after the expiration of [the applicable Maximum Review Period Rule](#) ~~120 days~~.

h. Extensions or Continuances

- i. Extension to File Completed Application. 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 [applicable Maximum Review Period Rule](#) ~~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.

i. Withdrawing an Application

An applicant may withdraw an application at any time prior to adoption of a final City decision on the application. Proceedings on the application shall terminate as of the date of withdrawal. The City Manager may refund all or part of the application fee, depending on how much staff work had been completed at the time of withdrawal.

j. Modification of Pending Application

- i. Modifications of a pending application shall be considered under the standards in effect at the time the application was filed, if the modification:
 - (1) Does not increase the amount of required parking, square footage, or the number of dwelling units; or
 - (2) Does not change the form of a structure.

- ii. Any modification that does not comply with subsection 1.j.i of this section shall be considered a new application.

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Item 12 (M): Changes reference to “120-Day Rule” to “applicable Maximum Review Period” to account for Multi-family projects of 5+ units, with 50% “affordable” units, per ORS 197.311.

4. HEARINGS

a. Conduct of the Hearing

The Chair of the hearing body shall conduct the initial evidentiary hearing on a major development application or an appeal of a decision on a minor development as follows:

- i. The Chair shall open the hearing by stating the general nature of the application, followed by a summary of these procedures.

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- xi. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present addition evidence or testimony regarding the application. The hearing body shall grant such request by continuing the hearing pursuant to subsection 4.a.xi(1) of this section or leaving the record open for additional written evidence or testimony pursuant to subsection 4.a.xi(2) of this section.

(1) If the hearing body grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence or testimony for the purpose of responding to the new written evidence.

(2) If the hearing body leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the City for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearing body shall reopen the record for a specific period of time. During this period, any person may submit written testimony raising new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

- (3) A continuance or extension granted pursuant to this section shall be subject to the [applicable Maximum Review Period](#) ~~120-Day Rule (ORS 227.178)~~, unless the continuance or extension is requested or agreed to by the applicant.

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c. Testimony, Exhibits, and Other Evidence

- i. Any person may present testimony at public hearing before a hearing body on a major development application or appeal of a minor development decision.
- ii. Any person may submit exhibits or written comments prior to or at the public hearing. Written comments or exhibits submitted prior to the public hearing must be received by the City Manager by ~~noon~~5:00 p.m. on the day of the scheduled hearing to be submitted by staff at the hearing. Written comments or exhibits submitted at the hearing must be filed with the

Item 13 (M): Change to noon. Because of the prep necessary on the day of a public hearing by both the project planner and administrative staff, it is not possible to catalogue or distribute, or analyze if necessary, late afternoon comments to the hearing body. Staff suggests moving the deadline up. Comments submitted by the new deadline will be distributed to the hearing body by email prior to the hearing; comments submitted after the deadline will need to be submitted into the record at the hearing by the commenter.

recording secretary and placed before the hearing body. Exhibits or written comments that are merely referred to in testimony but which are not placed before the hearing body pursuant to this section shall not become part of the record of the proceedings.

- iii. The hearing body may take official notice of all adjudicative facts and law which may be judicially noticed pursuant to ORS 40.060 to 40.090, including an ordinance, comprehensive plan, resolution, order, written policy or other enactment of the City of Lake Oswego. Matters officially noticed need not be established by evidence and may be considered by the hearing body in determination of the matter.

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f. Continuances

- i. The hearing body shall continue a public hearing or leave the record open when required to do so pursuant to LOC 50.07.003.4.a.xi.

- ii. The hearing body may elect to continue a hearing one or more times on its own motion or at the reasonable request of a party. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of the [applicable Maximum Review Period](#)~~120-Day Rule (ORS 227.178)~~. If the initial evidentiary hearing has not been completed pursuant to LOC 50.07.003.4.a, the continued hearing shall resume at the point in the proceedings at which the hearing was continued. If the initial evidentiary hearing has been concluded and the hearing body desires a continuance to reopen the record for additional testimony, the continued hearing shall be conducted as provided in subsection 4.f.iii of this section. In the later case, the hearing body may limit evidence or testimony to a particular issue or issues, but any person shall be allowed to raise new issues which relate to the new evidence, testimony or criteria for decision-making for which the hearing body continued the hearing.

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7. APPEALS

a. Review by Hearing Body

An application for a major development, minor developments in the R-DD zone pursuant to LOC [50.07.003.14.a.ii\(1\)](#), or an appeal of a decision of the City Manager regarding a minor development application (except any minor development decision specified by this Code to be made by the City Engineer) shall be decided by a hearing body following a public hearing held pursuant to this Code.

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m. Continuances

- i. The Council may elect to continue a hearing one or more times on its own motion or at the reasonable request of a party. No continuance shall be granted at the request of the applicant unless the applicant waives the [applicable Maximum Review Period](#)~~120-Day Rule~~ in writing or on the record. If the hearing has not been completed pursuant to LOC 50.07.003.7.j, the continued hearing shall resume at the point in the proceedings at which the hearing was continued. If the hearing has been concluded and the Council desires a continuance to reopen the hearing for additional testimony, the continued hearing shall be conducted as provided in subsection 7.m.ii of this section. In the later case, the Council may limit testimony to a particular issue or issues. If the appeal hearing has been concluded and the Mayor has returned the matter to the table for deliberations, the Council may continue deliberations to a date, time and place certain.

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Item 12 (M): Amends 50.07.003, Review Procedures, to be consistent with ORS 197.311, which reduces from 120 days to 100 days the time period in which final action must be taken on applications for multi-family residential units of 5+ units with at least 50% of the units sold or rented as affordable (defined as housing that is affordable to households earning 60% of county median or less.)

50.07.004 ADDITIONAL SUBMISSION REQUIREMENTS

This section contains submission and review criteria for the procedures listed below. Where review criteria are important for an understanding of the substantive requirements of a section or limited in size they have been maintained with the substantive provisions.

~~9. SOLAR ACCESS PERMIT~~

~~a. Purpose~~

~~The purpose of this article is to protect solar access to solar features on lots designated or used for a single-family detached dwelling under some circumstances. It authorizes owners of such lots to apply for a permit that, if granted, prohibits solar features from being shaded by certain future vegetation on and off the permittee's site.~~

~~b. Applicability~~

~~An owner or contract purchaser of property may apply for and/or be subject to a solar access permit for a solar feature if that property is in a R-7.5, R-10 or R-15 zone, or is or will be developed with a single-family dwelling. The City's decision whether or not to grant a solar access permit is intended to be ministerial and not subject to a public hearing.~~

~~c. Development Review~~

~~A solar access permit shall be processed pursuant to the ministerial development decision process in LOC 50.07.003.13.~~

~~d. Solar Access Submission Requirements~~

~~An application for approval of a development subject to this section shall include:~~

- ~~i. Maps and text sufficient to show the development complies with the solar design standards, except for lots for which an exemption or adjustment is requested, including at least:~~

- ~~(1) The north-south lot dimension and front lot line orientation of each proposed lot.~~
- ~~(2) Protected solar building lines and relevant building site restrictions, if applicable.~~
- ~~(3) For the purpose of identifying exempt trees, a map showing existing trees at least 30 ft. tall and over six in. diameter a point four ft. above grade, indicating their height, diameter and species, and stating that they are to be retained and are exempt.~~
- ~~(4) Copies of all private restrictions relating to solar access.~~

~~ii. If an exemption or adjustment to LOC 50.06.007.1.d is requested, maps and text sufficient to show that given lots or areas in the development comply with the standards for such an exemption or adjustment in LOC 50.04.004.1, Exemptions from Solar Design Standard, or LOC 50.04.004.2, Adjustments to Solar Design Standard, respectively.~~

~~iii. The applicant shall file a note on the plat or other documents in the office of the County Recorder binding the applicant and subsequent purchasers to comply with the future shade protection standards in this section. The City shall be made a party of any covenant or restriction created to enforce any provision of this section. The covenant or restriction shall not be amended without written City approval.~~

~~e. Solar Site Plan Required~~

~~An applicant for a building permit for a structure subject to solar balance point requirements shall submit a site plan that shows the maximum shade point height allowed and the allowed shade on the proposed structure's solar features. If applicable, the site plan also shall show the solar balance point for the structure.~~

~~f. Application Contents~~

~~An application for a solar access permit shall contain the following information:~~

~~i. A legal description of the applicant's lot and a legal description, owners' names, and owners' addresses for lots all or a portion of which are within 150 ft. of the applicant's lot and 54° east and west of true south measured from the east and west corners of the applicant's south lot line. The records of the County Assessor shall be used to determine who owns property for purposes of an application. The failure of a property owner to receive notice shall not invalidate the action if a good faith attempt was made to notify all persons who may be affected.~~

~~ii. A scaled plan of the applicant's property showing:~~

- ~~(1) Vegetation in the ground as of the date of the application if, when mature, that vegetation could shade the solar feature.~~

~~(2) The approximate height above grade of the solar feature, its location, and its orientation relative to true south.~~

~~iii. A scaled plan of the properties on the list required in subsection 9.f.i of this section showing:~~

~~(1) Their approximate dimensions; and~~

~~(2) The approximate location of all existing vegetation on each property that could shade the solar feature(s) on the applicant's property.~~

~~iv. For each affected lot, the requested solar access height limit. The solar access height limit is a series of contour lines establishing the maximum permitted height for non-exempt vegetation on lots affected by a solar access permit. The contour lines begin at the bottom edge of a solar feature for which a permit is requested and rise in five-ft. increments at an angle to the south not less than 21.3° from the horizon and extend not more than 54° east and west of true south.~~

~~Notwithstanding the preceding, the solar access height limit at the northern lot line of any lot burdened by a solar access permit shall allow non-exempt vegetation on that lot whose height causes not more shade on the benefited property than could be caused by a structure that complies with LOC 50.06.007, Solar Access, for existing lots.~~

~~v. The required fee.~~

~~vi. If available, a statement signed by the owner(s) of some or all of the properties to which the permit will apply if granted verifying that the vegetation shown on the plan submitted pursuant to subsection 9.f.iii of this section accurately represents vegetation in the ground on the date of the application. The City shall provide a form for that purpose. The signed statements provided for herein are permitted but not required for a complete application.~~

~~**g. Approval Standards for a Solar Access Permit**~~

~~The City Manager shall approve an application for a solar access permit if the applicant shows:~~

~~i. The application is complete,~~

~~ii. The information it contains is accurate, and~~

~~iii. Non-exempt vegetation on the applicant's property does not shade the solar feature.~~

~~**h. Duties Created by Solar Access Permit**~~

~~i. A party to whom the City grants a solar access permit shall:~~

~~(1) Record the permit, legal descriptions of the properties affected by the permit, the solar access height limit, and the site plan required in LOC 50.07.004.9.f.iii with such modifications as required by the City Manager in the office of the County Recorder with the deeds to the properties affected by it, indexed by the names of the owners of the affected properties, and pay the fees for such filing. The recording shall occur within ten days of the date of issuance and the applicant shall notify the City of recording. Failure to record as required by this section shall void the permit;~~

~~(2) Install the solar feature in a timely manner as provided in LOC 50.07.004.9.k, Expiration and Extension of a Solar Access Permit; and~~

~~(3) Maintain non-exempt vegetation on the site so it does not shade the solar feature.~~

~~ii. An owner of property burdened by a solar access permit shall be responsible and pay all costs for keeping non-exempt vegetation from exceeding the solar access height limit. However, vegetation identified as exempt on the site plan required in LOC 50.07.004.9.f.iii, vegetation an owner shows was in the ground on the date an application for a solar access permit is filed, and solar friendly vegetation are exempt from the solar access permit.~~

~~**i. Application Review Process**~~

~~i. Pre-Application Conference: Unless waived by the City Manager, prior to filing an application for a solar access permit, an applicant or applicant's representative shall pay the required fee and meet with the City Manager to discuss the proposal and the requirements for an application. If a meeting is held, the City Manager shall convey a written summary of the meeting to the applicant by mail within five calendar days of the meeting.~~

~~ii. After the pre-application meeting is held or waived, the applicant may file an application containing the information required in LOC 50.07.004.9.f.~~

~~iii. Within seven calendar days after an application is filed, the City Manager shall determine whether the application is complete and if it is not complete notify the applicant in writing, and specify what is required to make it complete.~~

~~iv. Within 14 calendar days after the City Manager decides an application for a solar access permit is complete the City Manager shall issue a written decision tentatively approving or denying the request, together with reasons therefor, based on the standards of LOC 50.07.004.9.g, Approval Standards for a Solar Access Permit.~~

~~(1) If the tentative decision is to deny the permit the City Manager shall mail a copy of the decision to the applicant.~~

~~(2) If the tentative decision is to approve the permit, and the owners of all affected properties did verify the accuracy of the plot plan as permitted under LOC 50.07.004.9.f.vi, the City Manager shall mail a copy of the decision to the applicant and affected parties by certified mail, return receipt requested.~~

~~(3) If the tentative decision is to approve the permit, and the owners of all affected properties did not verify the accuracy of the plot plan as permitted under LOC 50.07.004.9.f.vi, the City Manager shall send a copy of the tentative decision to the applicant and to the owners of affected properties who did not sign the verification statement pursuant to LOC 50.07.004.9.f.vi by certified mail, return receipt requested. If the City Manager determines that the owners of a given property affected by the permit are not the occupants of that property, then the City Manager also shall send a copy of the notice to the occupants of such property.~~

~~(a) The notice sent to the applicant shall include a sign that says a solar access permit for the property has been tentatively approved, and that informs readers where to obtain more information about it. The applicant shall be instructed to conspicuously point the sign so it is visible from right of way adjoining the property, and to sign and return a form provided by the City Manager certifying that the sign was posted as provided herein not more than 14 days after the tentative decision was mailed.~~

~~(b) The notice shall include the plot plans required in LOC 50.07.004.9.f.ii and iii, the proposed solar access height limits, and duties created by the permit.~~

~~(c) The notice shall request recipients to verify that the plot plan shows all non-exempt vegetation on the recipient's property, and to send the City Manager comments in writing within 14 calendar days after the tentative decision is mailed if the recipient believes the applicant's plot plan is inaccurate.~~

~~(4) Within 28 days after notice of a tentative decision is mailed to affected parties, the City Manager shall consider responses received from affected parties and/or an inspection of the site, modify the plot plan and the permit to be consistent with the accurate information, and issue a final decision. The City Manager shall send a copy of the permit and solar access height limits to the owners of each property affected by the permit by certified mail, return receipt requested.~~

~~v. If the application is approved, the applicant shall, as required by LOC 50.07.004.9.h.i(1), record in the office of the County Recorder with the deeds to the properties affected by it, the permit, associated solar access height limits, legal descriptions for the affected properties, and the site plan required in LOC 50.07.004.9.f.iii with such modifications as required by the City Manager before the permit is effective.~~

~~j. Permit Enforcement Process~~

~~i. Enforcement Request. A solar access permittee may request the City to enforce the solar access permit by providing the following information to the City Manager:~~

~~(1) A copy of the recorded solar access permit and the plot plans submitted with the permit; and~~

~~(2) The legal description of the lot(s) on which alleged non-exempt vegetation is situated, the address of the owner(s) of that property, and a scaled site plan of the lot(s) showing the non-exempt vegetation; and~~

~~(3) Evidence the vegetation violates the solar access permit, such as a sunchart photograph, shadow pattern, and/or photographs.~~

~~ii. Enforcement Process. Allowing or permitting non-exempt vegetation to violate the solar access permit is a civil violation and a public nuisance. If the City Manager determines the request for enforcement is complete, he or she shall initiate an enforcement action pursuant to LOC Chapter 34. Provided the City Manager shall not enforce the permit against vegetation the owner of which shows was in the ground on the date the permit application was filed with the City.~~

~~**k. Expiration and Extension of a Solar Access Permit**~~

~~i. Expiration. Every permit issued by the City Manager under the provisions of this section shall expire if the construction of the solar feature protected by such permit is not commenced within 180 days from the date of such permit, or if the construction of the solar feature protected by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further, that such suspension or abandonment has not exceeded one year. If the permittee does not show construction of the solar feature will be started within 180 days of the date of the permit or the extension, or if the solar feature is removed, the City Manager shall terminate the permit by recording a notice of expiration in the office of the County Recorder with the deeds to the affected properties.~~

~~ii. Extension. Any permittee holding an unexpired permit may apply for an extension of the time within which he or she may commence work under that permit when he or she is unable to commence work within the time required by this section for good and satisfactory reasons. The City Manager may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.~~

~~iii. A permit shall be void and of no effect if it is not recorded as required by LOC 50.07.004.9.h.i(1).~~

Item 4 (P): The Solar Access Permit provisions are deleted in their entirety. Staff could find no history of a Solar Access Permit ever being issued since the adoption of the Solar Code in 1988; additionally, the Solar Access Permit allows Property Owner "A" to encumber Property Owner "B's" property.

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:

100-Year Flood

See LOC 50.05.011.3.c, "Flood, Base."

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Exempt Solar-Friendly Tree or Vegetation (Solar Access)

The full height and breadth of vegetation that the City Manager has identified as "solar friendly" and listed in the "Solar Friendly Trees Report" dated April 1987 as that report may be amended from time to time; and any vegetation listed on a plat map, a document recorded with the plat, or a solar access permit as exempt.

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~~Non-Exempt~~ Solar-Unfriendly Tree or Vegetation (Solar Access)

Vegetation that is not solar-friendly ~~exempt~~.

Item 3 (M): These amendments make the code more user-friendly by making terminology that is (1) more understandable, and (2) consistent with the terminology used in the referenced “Solar Friendly Trees Report (1987)”.

50.11.004 APPENDIX D – LAKE OSWEGO MASTER PLANT LIST

The Lake Oswego Master Plant List identifies plants appropriate for landscaping in specific areas, i.e., resource areas, street trees, West Lake Grove Overlay District, or for other purposes as established in this Code or elsewhere in the Lake Oswego Code, that either identifies plants that:

- a. Are adapted to local soils and growing conditions, provide food and shelter for native wildlife, and generally do not require fertilizers or pesticides, and do not require long-term irrigation, which can increase erosion and sedimentation; or

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1. Native Plants

The plants below are native to the Willamette Valley. They are adapted to local climate and soils. Planted in the right location, they should thrive with little or no maintenance.

Scientific Name	Common Name
Native Tall Shrubs/Small Trees	
<i>Acer circinatum</i>	Vine maple
<i>Amelanchier alnifolia</i>	Western serviceberry/Saskatoon
<i>Berberis (Mahonia) aquifolium</i>	Tall Oregon grape
<i>Cornus stolonifera</i>	Redosier dogwood
<i>Corylus cornuta</i>	Hazelnut
<i>Crataegus douglasii</i>	Douglas hawthorn
<i>Euonymus occidentalis</i>	Western wahoo
<i>Holodiscus discolor</i>	Oceanspray
<i>Lonicera involucrata</i>	Black twinberry
<i>Malus fusca</i>	Western crabapple
<i>Oemleria cerasiformis</i>	Indian plum
<i>Philadelphus lewisii</i>	Mock orange
<i>Physocarpus capitatus</i>	Pacific ninebark
<i>Prunus virginiana</i>	Chokecherry
<i>Ribes sanguineum</i>	Red-flowering currant
<i>Rosa gymnocarpa</i>	Baldhip rose
<i>Rosa nutkana</i>	Nootka rose

Scientific Name	Common Name
Native Tall Shrubs/Small Trees	
<i>Rosa pisocarpa</i>	Clustered wild rose
<i>Rubus parviflorus</i>	Thimbleberry
<i>Rubus spectabilis</i>	Salmonberry
<u><i>Sambucus cerulea</i></u>	<u>Blue elderberry</u>
<u><i>Sambucus racemosa</i></u>	<u>Red elderberry</u>
<u><i>Vaccinium parvifolium</i></u>	<u>Red huckleberry</u>
<u><i>Vaccinium ovatum</i></u>	<u>Evergreen huckleberry</u>

Scientific Name	Common Name
Native Trees	
<i>Abies grandis</i>	Grand fir
<i>Arbutus menziesii</i>	Madrone
<i>Acer macrophyllum</i>	Big-leaf maple
<i>Alnus rubra</i>	Red alder
<i>Cornus nutallii</i>	Pacific dogwood
<i>Fraxinus latifolia</i>	Oregon ash
<i>Pinus contorta</i>	Shore pine
<i>Pinus ponderosa</i>	Ponderosa pine
<i>Populus trichocarpa</i>	Black cottonwood
<i>Prunus emarginatus</i>	Bitter cherry
<i>Pseudotsuga menziesii</i>	Douglas fir
<i>Quercus garryana</i>	Oregon white oak
<i>Rhamnus purshiana</i>	Cascara
<i>Salix fluviatilis</i>	Columbia River willow
<i>Salix lasiandra</i>	Pacific willow
<i>Salix scouleriana</i>	Scouler's willow
<i>Salix sitchensis</i>	Sitka willow
<i>Taxus brevifolius</i>	Western yew

<i>Thuja plicata</i>	Western red cedar
<i>Tsuga heterophylla</i>	Western hemlock
<i>Sambucus cerulea</i>	Blue elderberry
<i>Sambucus racemosa</i>	Red elderberry
<i>Spiraea douglasii</i>	Douglas spiraea
<i>Symphoricarpos albus</i>	Snowberry
<i>Vaccinium parvifolium</i>	Red huckleberry
<i>Vaccinium ovatum</i>	Evergreen huckleberry

Item 14 (M): This amendment moves four shrubs out of the “tree” section to the proper “tall shrub/small tree” section.