

STAFF REPORT
CITY OF LAKE OSWEGO
PLANNING AND BUILDING SERVICES DEPARTMENT

APPLICANT

City of Lake Oswego

FILE NO.

LU 18-0035, Ordinance 2797

LOCATION

Citywide

STAFF

Leslie Hamilton, AICP, Senior Planner

DATE OF REPORT

August 30, 2018

PLANNING COMMISSION HEARING DATE

October 8, 2018

I. APPLICANT'S REQUEST

The City of Lake Oswego is proposing to amend Chapter 50 (Community Development Code) of the Lake Oswego Code for the purpose of clarifying and updating various sections. The proposed amendments include provisions that will:

- Increase setbacks on lots zoned high density (R-0, R-2 and R-3) when they abut lots that will be zoned low density (R-7.5, R-10 and R-15) upon annexation into the City.
- Update all references of “exempt” vegetation and “non-exempt” vegetation” to “solar friendly” vegetation and “solar unfriendly” vegetation, respectively, to be consistent with the Solar Friendly Trees Report in LOC Appendix 50.11.004-D (5)
- Delete the Solar Access Permit standard
- Amend the applicability of the Solar Access standard to apply to subdivision, but not to partitions or lot line adjustments
- Identify appropriate exceptions to the utility undergrounding requirement

The sections proposed for revision relate to several general topic areas and a number of them are more fully described in Section III of this report. The draft code amendments, which would enact these changes, are included in Attachment 2 to Exhibit A-1.

II. APPLICABLE REGULATIONS

A. City of Lake Oswego Comprehensive Plan

Community Culture – Civic Engagement, Policies 1, 2, 4 and 5
Land Use Planning - Land Use Administration, Policy D-1
Inspiring Spaces and Places – Goal 1, Policy 1(a)

B. City of Lake Oswego Community Development Code

LOC 50.07.003.16.a	Legislative Decisions Defined
LOC 50.07.003.16.c	Required Notice to DLCD
LOC 50.07.003.16.d	Planning Commission Recommendation Required
LOC 50.07.003.16.e	City Council Review and Decision

III. INTRODUCTION / BACKGROUND INFORMATION

The purpose of the proposed updates and amendments is to correct errors, eliminate text ambiguity or redundancy, and clarify text. This process is part of the City’s ongoing effort to make the regulations more business-friendly and resident-friendly while maintaining community standards.

Proposed Ordinance 2797 consists of 14 text amendments. The text boxes in Attachment 2 describe the reason for each amendment, and include commentary on its background and discussion points. The amendments that generated the most discussion at the work sessions are further described below.

Item 1: Increased Setbacks on High Density Lots (Page 1 of Attachment 2): 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 (R-7.5, R-10 or R-15). However, under current code, the zoning of abutting unincorporated properties is not considered. The standard for increased setbacks is expanded to apply where unincorporated lots, upon annexation, would be zoned low-density. This amendment requires Measure 56 Noticing.

Item 3: Tree Terminology in the Solar Codes (Pages 2-4, 20-22 and 36-37 of Attachment 2): The model solar code contains 18 solar-specific definitions that are required to decipher the solar standards, including definitions for “Exempt Trees” and “Non-Exempt Trees”, as follows:

Exempt 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.”

Non-Exempt Tree or Vegetation (Solar Access): Vegetation that is not exempt.

These definitions reference the Solar Friendly Tree Report, which is found in Appendix 50.11.004-D of the CDC (Exhibit F-1). The Solar Friendly Tree Report identifies trees as either “Solar Friendly” or “Solar Unfriendly.”

The solar standards of LOC 50.06.007, when considering shade from existing vegetation, refer to “exempt” and “non-exempt” trees when describing “solar-friendly” and “solar-unfriendly” trees, respectively. The terms “exempt” and “non-exempt” are jargon and difficult to understand. For creating a more accessible Development Code, the terms “exempt” and “non-exempt” have been replaced with the terms “solar-friendly” and “solar-unfriendly,” respectively.

Item 4: Solar Access Permit (Pages 4, 30-36 of Attachment 2): The purpose of a Solar Access Permit is to protect solar features on lots developed with single family detached dwellings. A Solar Feature is defined as:

“A device...that does or will use direct sunlight as a source of energy for such purposes as heating or cooling of a structure, heating or pumping of water, and generating electricity. Examples of a solar feature include a window that contains at least 20 sq. ft. of glazing oriented within 45° east and west of true south, a solar greenhouse, or a solar hot water feature. A solar feature may be used for purposes in addition to collecting solar energy, including but not limited to serving as a structural member or part of a roof, wall, or window. A south-facing wall without windows and without other features that use solar energy is not a solar feature for purposes of this Code.”

The Solar Access Permit, if granted, prohibits solar features from being shaded by future vegetation, *both on and off the designated site*. The Solar Access Permit is ministerial, and the applicant must provide the following:

- Maximum Shade Point allowed on structure(s) south of the “protected” solar feature
- The allowed shade from the structure(s) south of the “protected” solar feature, and where the shade falls on the “protected” solar feature
- The dimensions and property owners’ names of all properties wholly or partially within 150 feet of the “protected” property, and a scaled plan that shows the location of all existing vegetation on these properties that could shade the applicant’s solar feature

- The height, location and orientation of existing vegetation on properties within 150 feet of the site that could, when mature, shade the “protected” solar feature of the applicant
- The requested limit of the height of existing vegetation

If a Solar Access Permit is granted, the applicant records the height restrictions on all burdened properties, and the burdened property owner is responsible for paying all costs associated with keeping the vegetation from exceeding the solar access height limit. The Solar Access Permit appears to allow one property owner to encumber a lot that he or she does not own or have easement rights to. It should be noted that there is no record of the City issuing a Solar Access Permit. Based on these concerns and input from the Planning Commission at the July work session, the draft amendment deletes the Solar Access Permit and all references to it.

Item 6: Exemptions for Utility Undergrounding (Pages 6-7, 9-10, 22-24 of Attachment 2): The Utility Standard [LOC 50.06.008.4 and others] requires that all development connecting to utilities must place the utilities underground. The Building Code [LOC 45.09.075] exempts building remodels.¹ The scope of some small developments – such as Accessory Dwelling Units (ADUs) and partitions – often does not warrant the cost and disruption of undergrounding 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. Planning staff worked with the Engineering staff to identify appropriate exemptions to undergrounding, specifically for smaller projects where relocating utilities in the public right-of-way are not practical. [Note: There are references to “undergrounding” in the WLG and DRD districts that are deleted because they are redundant to the standards in LOC 50.06.008.]

At the work session in May, the Commission requested information on the definition of “remodel” and “demolition” as it applied to this exemption, and thresholds for exempting small projects from the undergrounding requirement. The CDC does not define either term; the Building Code, Article 45, defines “demolition” as:

- Removal of all exterior walls;
- Removal of the superstructure (the part of the building or construction above the lowest subflooring; “lowest subfloor” is the bottommost structural floor laid as a base for a finished floor), such that none of the existing superstructure is maintained; or
- Alteration, abandonment or removal of all of the existing perimeter foundation.

¹ **45.09.075 Undergrounding of Utilities.** Utility service facilities shall be located underground in conjunction with construction of all **new structures** subject to this Code that require utility service. The City may require undergrounding of utility service facilities for other structures when subject to development review approval under LOC Chapter 50.

The requirement for undergrounding, and the specific exemptions to it, are shown below in an excerpt from the Utility Standard. In practice, many small projects are found to be exempt from the undergrounding requirement due to the limited benefit of “spot undergrounding” or the disproportionate cost of undergrounding relative to the impact of the development. The following analysis was provided in a recent partition approval to justify an exemption from the undergrounding requirement [LU 17-0054]:

“As to existing utilities along the site frontage of Douglas Circle, the Engineering staff notes there are existing overhead utilities located along the site frontage. It would not be efficient or substantially beneficial to underground the frontage utilities at this time, as it would only result in “spot undergrounding” along the Douglas Circle frontage of the site. It is likely that any substantial undergrounding of frontage utilities along Douglas Circle would come through a street-long improvement project, either as part of a local improvement district or as part of an underground district pursuant to ORS 758.210 et seq. To satisfy this code requirement, the applicant shall be required to underground on-site utilities and to execute and record an LID waiver of remonstrance regarding the formation of a local improvement district or underground district, for the undergrounding of frontage utilities that includes the Douglas Circle frontage of the site.”

Small projects such as Accessory Dwelling Unit (ADU) construction and partitions (land division up to three lots) are routinely exempted from utility undergrounding because of the limited benefit of the undergrounding and the *Dolan* test for “rough proportionality” between the impact of the proposed development and the governmental exaction. The proposed amendments codify some routine exemptions, and also identify the process by which deferred undergrounding would be ultimately constructed.

Item 7: Flag Lot Standards in Uplands Overlay (Pages 11-15 of Attachment 2): 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 residences by prohibiting height increases for slope and roof projections. The overlay text is amended to clarify that the following standards apply to both flag and non-flag lots:

- Maximum height of 30 feet
- Prohibition of the roof height exception
- Limitations on impervious surfaces

This amendment requires Measure 56 Noticing.

Item 11: Solar Access - Subdivisions (Page 19 of Attachment 2): The Solar Access standard currently applies to all land divisions (partitions and subdivisions), and requires a lot orientation that will (1) maximize solar access and (2) minimize shade on abutting properties. A short description of the Solar Access compliance options, as well as allowed exceptions and adjustments to the standard, are included in Exhibit D-1, the Planning Commission staff memo dated July 12, 2018. As described in that memo, both applicants and staff have struggled with applying the Solar Access standard, or exemptions or adjustments to it. The standard includes many technical criteria with which staff and applicants have little expertise (i.e., determining true east-west axis, calculating shadow pattern from topography, calculating azimuths and sine functions, evaluation of solar-related off-site development costs.) Staff is aware that some jurisdictions only apply the Solar Access Standard to subdivisions, and exempt partitions from compliance. Based on input from the Planning Commission, staff recommends that Lake Oswego take the same approach and limit the applicability of the Solar Access standard to subdivisions.

IV. NOTICE OF APPLICATION

A. Newspaper Notice

On September 27, 2018, public notice of the proposed CDC text amendments and Planning Commission public hearing will be published in the *Lake Oswego Review*.

B. ORS 227.186 (Measure 56) Notice

The City followed the procedures required by ORS 227.186 (Ballot Measure 56) for notification of the owners of property potentially affected by the changes. The notice was mailed to all residential property owners (1) on unincorporated lots that would be zoned high density upon annexation and which also abut lots zoned low density (Item 1); and (2) within the Uplands Overlay (Item 7).

C. DLCD Notice

Pursuant to LOC 50.07.016, staff has provided notice of the proposed CDC text amendments to the Oregon Department of Land Conservation and Development (DLCD).

V. COMPLIANCE WITH APPROVAL CRITERIA

A. City of Lake Oswego Comprehensive Plan

Staff has identified six Comprehensive Plan Policies applicable to this proposal:

Community Culture – Civic Engagement

Policies 1, 2, 4 and 5.

Policy 1: Provide opportunities for citizen participation in preparing and revising local land use plans and ordinances.

Policy 2: Provide citizen involvement opportunities that are appropriate to the scale of a given planning effort. Large area plans, affecting a large portion of community residents and groups require citizen involvement opportunities of a broader scope than that required for more limited land use decisions.

Policy 4: Encourage citizens to participate through their neighborhood without excluding participation as individuals or through other groups.

Policy 5: Seek citizen input through service organizations, interest groups and individuals, as well as through neighborhood organizations.

Findings: The CDC, which implements the Comprehensive Plan, contains requirements for a citizen involvement program which clearly defines the procedures by which the general public will be notified in the on-going land use planning process and enables citizens to comprehend the issues and become involved in decision making. All required notification measures and opportunities for input as specified in the Code were provided during this process, including noticing to all Neighborhood Associations and business organizations. A Public Review Draft will be circulated between August 30 – September 27, 2018, and public hearings will be held before the Planning Commission and City Council. Therefore, the process followed for these amendments is in compliance with the above cited Comprehensive Plan policies.

Conclusion: The City has provided adequate opportunities for public participation consistent with the cited Comprehensive Plan policies.

Land Use Planning, Section D Land Use Administration

Policy D-1.

Policy D-1: *Coordinate the development and amendment of City plans and actions related to land use with other affected agencies, including county, state, Metro, federal agency, and special districts.*

Findings: Staff has provided the required notification to the County, State, and Metro consistent with this policy.

Conclusion: The proposal is consistent with this policy.

Inspiring Spaces and Places

Goal 1, Policy 1(a).

Goal 1, Policy 1(a): *Adopt implementation measures and guidelines that ensure new development in residential areas complements the existing built environment in terms of size, scale, bulk, height and setbacks.*

Findings: The proposed amendment to increase setbacks on high-density residential lots that abut lots that would be zoned low density upon annexation will ensure complementary development in residential areas through consistent setback patterns.

Conclusion: The proposal is consistent with this policy.

VI. RECOMMENDATION

Based on the information presented in this report, staff recommends approval of the proposed amendments to the CDC to provide clarification and correction and update relevant sections to reflect current City practices.

EXHIBITS

A. Draft Ordinance

A-1 Ordinance 2797, draft 08/24/18

Attachment 1: *Reserved for City Council Findings (not included)*

Attachment 2: Community Development Code Amendments, draft 08/30/18

B. Findings, Conclusions and Order [No current exhibits; reserved for hearing use]

C. Minutes [No current exhibits; reserved for hearing use]

D. Staff Reports

D-1 Planning Commission Memo dated 07/12/18 (due to size, attachments are not included with this staff report, but can be viewed on the project webpage)

E. Graphics/Plans [No current exhibits; reserved for hearing use]

F. Written Materials

F-1 Solar Friendly Trees Report, dated April 1987, LOC Appendix 50.11.004-D (5)

G. Letters [No current exhibits; reserved for hearing use]