

**STAFF REPORT**  
**CITY OF LAKE OSWEGO**

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**PLANNING DIVISION**

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APPLICANT:

City of Lake Oswego

FILE NO:

LU 11-0036

PROPERTY OWNERS:

N/A

STAFF:

Jessica Numanoglu

LEGAL DESCRIPTION

N/A

DATE OF REPORT:

November 29, 2011

LOCATION:

Citywide

DATE OF HEARING:

December 12, 2011

COMP. PLAN DESIGNATION:

N/A

ZONING DESIGNATION:

N/A

NEIGHBORHOOD ASSOCIATION:

All

**I. APPLICANT'S REQUEST**

The City is proposing Lake Oswego Code and Comprehensive Plan and Zoning Maps amendments to:

1. Adopt a new Chapter 50 consolidating, reorganizing, and making minor text amendments to the following chapters or articles of the Lake Oswego Code:

Chapter 50 – Community Development Code

Chapter 57 – Solar Access

Chapter 58 – Historic Preservation

Article 45.15 – Fences

2. Rename the following zoning districts for clarity and consistency (there are no changes to regulations or density proposed):

DD zone (Old Town Design District) to be renamed R-DD  
WR zone (Waterfront Cabana District) to be renamed R-W  
R-2.5 to be renamed WLG R-2.5 (West Lake Grove R-2.5)  
WLG OC/R-2.5 to be renamed WLG RMU (West Lake Grove Residential Mixed Use)  
WLG OC/NC to be renamed WLG OC (West Lake Grove Office Commercial)  
WLG R-2.5/W to be renamed WLG RLW (West Lake Grove Live/Work)

Ordinance 2579, which would enact these changes, is attached as Exhibit A-1.

## II. APPLICABLE REGULATIONS

### A. City of Lake Oswego Comprehensive Plan:

Goal 1	Citizen Involvement, Policies 1 and 5
Goal 2	Land Use Planning, Section 1, Land Use Policies and Regulations, Policy 23

### B. City of Lake Oswego Community Development Code:

LOC 50.75.005	Legislative Decision Defined.
LOC 50.75.010	Criteria for Legislative Decision
LOC 50.75.015	Required Notice to DLCD
LOC 50.75.020	Planning Commission Recommendation Required
LOC 50.75.025	City Council Review and Decision

### C. Statewide Planning Goal or Administrative Rule adopted pursuant to ORS Chapter 197

Goal 1	Citizen Involvement
Goal 2	Land Use Planning

## III. FINDINGS

### A. Background and Discussion:

In the summer of 2010, the City completed an audit of the Community Development Code (CDC) and related chapters to identify problems with its organization, readability, and usability, and to define an approach for creating a more user-friendly development code. The Audit Report (Report) recommended a two-phase strategy for updating the CDC and related chapters / article. Phase 1 consists of reorganizing the CDC in accordance with the annotated outline presented in the Report and Phase 2 would address substantive issues identified during the audit and Phase 1 of the project. The CDC text and Comprehensive Plan and Zoning Maps amendments being proposed in Ordinance 2579 implement Phase 1.

Below is a detailed description of the proposed amendments.

## 1. **Community Development Code Text Amendments**

The CDC and related codes have been amended and expanded numerous times over the years and are complex in terms of content, format, and organization, making it difficult for the user to navigate and understand. As a group, the CDC and related development codes:

- **Are difficult to navigate** – there are over 65 separate articles in the CDC alone and users have to flip between code sections to find key information and check several different chapters to find all standards related to one subject;
- **Lack clarity** – many regulations are not written or presented clearly and are scattered among different code sections;
- **Are repetitive** – standards that are the same in certain zones are repeated in several different articles, yet are often presented or worded in slightly different ways;
- **Lack integrated graphics** – all the code graphics are contained in appendices, which requires the reader to flip between the text and the graphics and reduces the effectiveness and usefulness of the graphics;
- **Lack clear Development Review procedures** – procedures are scattered among many different articles and chapters, making it difficult to understand what combination of procedures will apply before filing an application; and,
- **Lack user-friendly formatting** – the headers and footers in the codes do not have enough detail to help orient the reader, the indenting pattern of the text makes it difficult to read and understand the hierarchy of the regulations, and many subsections lack titles, which forces the user to read through lengthy text to find the information they are seeking.

To address these issues, the applicant proposes to consolidate, reorganize, and make minor text amendments to the following chapters and article of the Lake Oswego City Code:

Chapter 50 – Community Development Code

Chapter 57 – Solar Access

Chapter 58 – Historic Preservation

Article 45.15 – Fences

The above-listed chapters and article are proposed to be repealed and replaced with a consolidated new Chapter 50; no substantive changes to the content of these chapters or article is intended or proposed. The goal of this phase of the project is to present the existing content of the above-listed codes in a more logical, consistent, concise and user-friendly manner. In other words, the content of the code is the same, but presented in a different way.

The reorganized Planning Commission version of the Draft CDC (Attachment B of Ordinance 2579) contains explanatory footnotes that will be removed when the final Ordinance version of Draft CDC is prepared for adoption by the City Council. The footnotes identify major relocations of text referencing their location in the existing codes, flag substantive issues to be considered in Phase 2, and provide explanations for some minor text changes. Also included in the footnotes are explanations of changes that were made after consulting the Code Reorganization Work Group. The Work Group served as an informal sounding board to the project consultant when situations arose where it was unclear whether a proposed change might result in a substantive change. The Work Group consisted of members of the City Council (Councilors Olson and Tierney), Planning Commission (Commissioners Bhutani and Prager), Development Review Commission (Commissioner Needham), and staff.

On November 14, 2011, staff held a work session with the Planning Commission to review the draft code. At this work session, the Commission also provided recommendations on three items that were still pending with the Work Group. A list of all the issues forwarded to the Work Group and the Planning Commission and their recommendations is attached in Exhibit F-1. In addition, an errata sheet showing major corrections/edits made since the last publication of the draft code, dated September 2011, that was previously reviewed by the Commission is attached in Exhibit F-3.

In addition to consolidation and reorganization of the CDC, Solar Access, and Historic Preservation chapters, and the Fence article, the following changes were made to improve organization, readability, and clarity of the code:

1. The content of the chapters has been rearranged and grouped by subject into 11 new sections, as listed below:

- LOC 50.01 General Provisions
- LOC 50.02 Base Zoning Districts
- LOC 50.03 Use Regulations and Conditions
- LOC 50.04 Dimensional Standards
- LOC 50.05 Overlay and Design Districts
- LOC 50.06 Development Standards
- LOC 50.07 Review and Approval Procedures
- LOC 50.08 Adjustments, Alternatives and Variances
- LOC 50.09 Enforcement and Penalties
- LOC 50.10 Definitions and Rules of Measurement
- LOC 50.11 Appendices

2. New tables of contents have been created that include a general table of contents at the beginning of the Code and more detailed table of contents for each of the 11 new sections. (The table of contents is not actually adopted as part of the Ordinance, but can be included in the

codified version and revised by the City Recorder from time to time.) A reverse index of all the sections in the existing code and the corresponding citation for the sections in the draft reorganized code is attached as Exhibit F-2.

3. New titles have been added to sections and some subsections to make information easier to locate and to create a more complete table of contents.
4. Descriptive headers have been added to each page to help orient the reader to their location in the code and indenting and formatting has been improved to enhance readability.
5. Where appropriate, text has been reformatted into tables so that the information is easier find and understand.
6. Minor text edits for clarity have been made (shown in underline and ~~strike-out~~ in the draft). In some cases, new subsections were added for explanatory purposes. As an example, preceding the Use Table in LOC 50.03, a new subsection was included to explain how to use the table.
7. Many maps and graphics have been replaced with updated versions that convey the same information but in color and/or with enhanced readability. Most maps and graphics have been removed from appendices and placed into the body of the Code near the text to which they relate. Where regulatory information (for example, a height limit) was contained on a map or graphic it has either been moved into the text of the Code or eliminated if that standard was already contained in the text.
8. Cross-references have been improved and numbering has been standardized. The numbers ten and below have been spelled out and numbers 11 and greater are in Arabic. Measurements have been abbreviated.

While the readability and user-friendliness of the CDC has been greatly improved by the reorganization, it should be noted that some sections of the reorganized CDC, such as the permitted use table in LOC 50.03, may be somewhat difficult to read. By consolidating all the use information in one table, it has exposed the conflicts and weaknesses present in the existing CDC. Because no substantive changes are being made in this phase of the project, the task of overhauling the use table will be recommended as part of Phase 2.

As stated previously, the proposed amendments are not intended to make substantive changes to any of the code chapters. Although staff believes that none of the proposed amendments are substantive, in the event that a change was made inadvertently that would cause a different outcome for a proposed development than would have occurred under the prior version of

the CDC, staff proposes a transition period in which an administrative “Code Reorganization Variance” would be permitted if an applicant can show that a different outcome for a proposed development would occur as a result of the code reorganization. Staff recommends that the Code Reorganization Variance be subject to 14-day public notice and 15-day appeal periods pursuant to the Minor Development process; however, in order to streamline the application, staff suggests exempting the application from a pre-application conference. The Code Reorganization Variance should include a sunset clause so that it is effective for a limited time period, such as three years. A 3-year effective time period for the Code Reorganization Variance would allow a reasonable amount of time to identify and address issues caused by the adoption of the reorganized CDC, while providing a reasonable period of time for applicants to obtain a variance so they do not have to wait for a code amendment process to be completed.

Staff also recommends that a provision be included in Ordinance 2579 that would give the City Recorder authority to correct an obvious mistake or omission to a listed use, numerical standard, or punctuation without the need to process the change as a code amendment. For example, if a “P” for permitted use was inadvertently omitted for a salon use in the NC zone in the use table, but the prior code shows that it is a permitted use and it was not removed by another code amendment, the City Recorder could make that correction as a clerical error and would not have to go through a code amendment or require the applicant to apply for a Code Reorganization Variance.

## **2. Comprehensive and Zoning Maps Amendments**

The applicant is requesting to change the abbreviation of the DD and WR zoning districts for consistency with the abbreviations of other residential zones and to rename the West Lake Grove zoning districts for clarity purposes, as follows:

- DD zone (Old Town Design District) to be renamed R-DD
- WR zone (Waterfront Cabana District) to be renamed R-W
- R-2.5 to be renamed WLG R-2.5 (West Lake Grove Town Home Residential R-2.5)
- WLG OC/R-2.5 to be renamed WLG RMU (West Lake Grove Residential Mixed Use)
- WLG OC/NC to be renamed WLG OC (West Lake Grove Office Commercial)
- WLG R-2.5/W to be renamed WLG RLW (West Lake Grove Live/Work)

The DD and WR zones are both residential zone districts; however, the abbreviations for these districts do not match the other residential zone abbreviations in the City, all of which begin with an “R” to signify that they are residential zones (e.g., R-15, R-10, etc.). The applicant proposes to change the abbreviations of these districts to R-DD and R-W. The full names of the zone districts, Old Town Design District and Waterfront Cabana District, respectively, would not change.

The West Lake Grove zone designations are proposed to be renamed in order to reduce the appearance of split zoning on these properties. The WLG OC/R-2.5 and WLG OC/NC designations are zones that are unique to the West Lake Grove Design District; however, because there are general OC and NC designations in other areas of the City, the West Lake Grove districts can be confused for a split zone. To eliminate this confusion, the names and abbreviations are proposed to be changed as listed, above.

The proposed Comprehensive and Zoning Maps amendments would result in changes to the abbreviation and/or name of the zone districts only. No changes to zone regulations or density are proposed.

B. Compliance with Criteria for Approval:

**LOC 50.75.010 indicates that a legislative decision is generally a policy decision which is up to the discretion of the City Council, but shall:**

**1. Comply with any applicable state law;**

There are no known applicable state laws to review under this criterion.

**2. Comply with any applicable Statewide Planning Goal or Administrative Rule adopted pursuant to ORS Chapter 197; and Statewide Planning Goal 1, Citizen Involvement**

This Statewide Planning Goal 1 requires jurisdictions to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process. The City's acknowledged Comprehensive Plan and CDC contain all necessary 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 these documents were provided during this process. An informational open house was held on October 17, 2011, to present the draft reorganized code and to answer citizen's questions. Public hearings will be held before the Planning Commission and City Council. Therefore, the process followed for this amendment is in compliance with Statewide Planning Goal 1.

Statewide Planning Goal 2, Land Use Planning

This Goal requires jurisdictions to develop a land use planning process and policy framework as a basis for all decisions and actions related to the use of the land and to assure an adequate factual basis for such decisions and actions. This application provides the required information and responses to the applicable approval standards for Code text and Comprehensive and Zoning Maps amendments.

Furthermore, the proposed amendments do not involve any substantive changes to Code text or the Comprehensive and Zoning Maps, therefore, the request is consistent with Statewide Planning Goal 2.

**3. In the case of a legislative amendment to the Community Development Code, comply with any applicable provision of the Lake Oswego Comprehensive Plan.**

Goal 1, Citizen Involvement, Policies 1 and 5

1. Provide opportunities for citizen participation in preparing and revising local land use plans and ordinances.
5. Seek citizen input through service organizations, interest groups and individuals, as well as through neighborhood organizations.

**Findings:** This application addresses policies 1 and 5 above.

Pursuant to the requirements of a legislative process, announcements for the proposed Code text amendments have been provided to all neighborhood associations. Public hearings will be held before the Planning Commission and City Council. Citizens, interest groups, and neighborhood associations will have an opportunity to participate in the review of the proposed amendments during the City's public hearing processes. Notice has been provided consistent with City requirements. Adequate opportunities have been made available for citizen involvement with regard to this application.

**Conclusion:** The application complies with Goal 1, Citizen Involvement Policies 1 and 5.

Goal 2, Land Use Planning, Section 1, Land Use, Policy 23

23. Coordinate the development and amendment of City plans and actions related to land use with other county, state, Metro, federal agency and special district plans.

**Findings:** This application provides the required information and responses to the applicable approval standards and does not involve any substantive changes to Code text or Comprehensive or Zoning Maps, and is therefore consistent with Statewide Planning Goal 2. Additionally, notice of the application has been provided to jurisdictions and agencies such as DLCD, Metro, Clackamas County and Lake Oswego service providers as required by Goal 2.

**Conclusion:** The application complies with Goal 2, Section 1, Policy 23.

**C. Lake Oswego Community Development Code Procedural Requirements**

LOC 50.01.010      Purpose



LOC 50.05.005	Zoning Districts
LOC 50.05.010	Zoning Map
LOC 50.79.030	Major Development
LOC 50.77.007	Burden of Proof
LOC 50.77.030	Application Procedures
LOC 50.82.005-.020	Review of Major Development Applications and Appeals
LOC 50.83	Hearings before a Hearing Body
LOC 50.75.005	Legislative Decision Defined
LOC 50.75.010	Criteria for Legislative Decision
LOC 50.75.015	Required Notice to DLCD
LOC 50.79.020	Planning Commission Recommendation Required
LOC 50.79.025	City Council Review and Decision

**Findings:** The application has been submitted, noticed and reviewed in accordance with the City of Lake Oswego CDC requirements.

**Conclusion:** The record indicates that the application complies with all of the above applicable procedural requirements.

#### IV. CONCLUSION

The proposed amendments are in compliance with City Comprehensive Plan policies, state laws, and statewide planning goals.

#### V. RECOMMENDATION

Staff recommends approval of the proposed amendments to the Code text and the Comprehensive Plan and Zoning Maps to improve organization, readability, and clarity.

Staff also recommends that (1) a “Code Reorganization Variance” be adopted as part of Ordinance 2579 in order to provide relief to an applicant in the event that the amendments inadvertently cause a different outcome for a proposed development that would have been allowed by the prior code and (2) a provision is included in the ordinance to allow the City Recorder to make corrections to listed uses, numerical standards, or punctuation without the need for a code amendment if the error was caused by the code reorganization.

#### EXHIBITS:

##### A. Ordinances

A-1\* Draft Ordinance 2579, dated November 29, 2011 (includes Attachment B)

*\*Please note that only the ordinance is attached to the staff report. Copies of Attachment B have been provided to the Planning Commission under separate cover. The document can be found on the City’s web site under Case File LU 11-0036 at: <http://www.ci.oswego.or.us/plan/casef.htm>.*

- B. Findings, Conclusions and Order (No current exhibits; reserved for hearing use)
- C. Minutes (No current exhibits; reserved for hearing use)
- D. Staff Reports (No current exhibits; reserved for hearing use)
- E. Graphics/Plans (None)
- F. Written Materials
  - F-1 Code Reorganization Work Group Items and Recommendations
  - F-2 Reverse Index for Code Sections in Current and Draft Code
  - F-3 Errata Sheet (lists major corrections/changes made since the publication of the September 2011 Draft Code)
- G. Letters