Ordinance 2526
Attachment B

PROPOSED AMENDMENTS (HOUSEKEEPING WITH POLICY IMPLICATIONS) TO THE LAKE OSWEGO COMMUNITY DEVELOPMENT CODE (LOC CHAPTER 50)

General Notes:

1. Following the Zoning Code and Development Code reorganization and consolidation in 2002, it has been a goal of the Planning Division to present regular "updates" to the Community Development Code (CDC). The 2004-05 update was adopted January 2006. Since then, additional updates have been compiled but for various reasons, the update has been delayed. The Planning Commission hearing on the updates has been scheduled for September 22, 2008. The 2008 update contains proposed amendments that have been suggested over a three-year period. This explains the relatively large number of proposed amendments.
2. The general purposes of the CDC update is to: correct inadvertent errors in text or reference; clarify text which has been found to be confusing, by codifying the Planning Division's interpretation; resolve conflicts between code sections; simplify code provisions, where possible; present "policy" items for consideration, due to perceived changes to community goals. Although the CDC update continues the 2002 reorganization purpose of "streamlining and clarifying", it also contains proposed amendments which are substantive.
3. During the period of this compilation of amendments to the CDC, an "Infill Task Force II" was convened to consider amendments relating to "infill development". These amendments affect the zone requirements, as well as the procedure for consideration of exceptions to the zone requirements. This compilation of proposed amendments does not attempt to include the "Infill Development II" recommendations. It is envisioned that the Planning Commission will hold concurrent public hearings on changes to the CDC arising out of these proposed amendments, as well as from "Infill Development II". The Planning Commission will decide how the various amendments for a code section shall be consolidated for recommendation to the City Council.
4. This compilation of proposed amendment was prepared by the Assistant Planning Directors for Development Review and Long Range Planning, and the Deputy City Attorney over many months. As is the case with any revision document that is compiled over a long period of time, there are amendments to the CDC that have occurred during the period of compiling these proposed amendments. These "mid-stream" amendments are generally specific to an issue, and thus did not include all amendments to that code section then under consideration. Following the August 7, 2008 version, we are in the process of verifying the currency of each code section proposed for amendment: where a code section was proposed for revision and included in this on-going compilation, but that code section was later revised, it is necessary to update the text of the code section in this compilation, and retain the proposed amendments in the proposed amendment. This process is expected to be completed by August 30, 2008. [The current CDC text can be found online at: www.ci.oswego.or.us].
5. Commentary has been included following most of the proposed amendments. This commentary, marked with yellow highlight and indented following the code section or subsection proposed for amendment, is intended as a brief summary of the reasons underlying the proposed amendment. It was prepared during the editing process. It is hoped to be helpful, but the reader should understand that the commentary was not scrutinized to the same degree as the proposed amendments.

6. Highlights:

a. Blue highlights: Some section titles have been marked with a blue highlight. The Planning Commission has reviewed earlier drafts of these proposed amendments. When amendments were made to the section after the Planning Commission reviewed it, the blue highlight was added to indicate that some text in that marked section has changed since the Planning Commission saw it last.

b. Red highlights: Sections marked or containing red highlights indicate that staff has proposed some options for the Planning Commission, rather than a specific proposed amendment.

7. Appendixes. In some cases, Appendixes have been updated or added. Although many of these are incorporated into this 8/07/08 version, the compiler will be reviewing all of the appendixes to make certain that they included. This is estimated to be complete by August 30, 2008.

8. A companion ordinance has been prepared (Ordinance 2525) that addresses code update issues that have been considered to be general housekeeping amendments.

Article 50.02
DEFINITIONS

Section 50.02.005 Definitions

Boat House. A roofed structure built along the shore of a river, lake, canal or stream for the purpose of storing a boat or other watercraft and accessories. Incidental uses of a boat house includes, but are not limited to: sanitary facilities (including shower), cooking facilities, rooftop decks (including stairs, whether interior or exterior), ….The following uses are not permitted within a boat house: habitable room(s); office; sleeping facilities; eating facilities[EPB1].

The scope of "boat house," and how much additional use can occur before a boat house is no longer a "boat house" has arisen several times over the past, and staff believes that a legislative examination of this issue would provide guidance to both the public and staff.

Alternative suggestion: size limitation - 500? [Boat houses are exempt from Lot Coverage calculations (LOC 50.02.005, "Lot Coverage") and from Oswego Lake setback (LOC 50.22.030).]

Alternative: retain issue to address at time of Lakefront Zoning consideration.

Density Transfer Acre/Acreage. Potentially hazardous or resource areas within which development may occur or from which density may be transferred to buildable portions of the site, only after it has been demonstrated by the applicant that development can occur in compliance with criteria established by this Code, including the Development Standards. Density Transfer Acre includes the following:

a. Area within the floodway and the floodway fringe as shown on the FEMA flood maps,
b. Area of over 25% slope,
c. Area in known landslide areas or in areas shown to have potential for severe or moderate landslide hazard, and
d. Area in the RC or RP Districts pursuant to LOC 50.16.045, stream buffer areas of major stream corridors, wetlands and Distinctive Natural Areas, and
e. Area to be dedicated as part of the development for~~in~~ public open space and parks.

Subsection (e) clarifies that the time for determining the acreage for density transfer for parks is "to be dedicated".

Detached: A horizontal separation of three feet or more, between the subject structure and nearby structures. The separation shall be from eave to eave, or in situations where there are no eaves, then measured from wall to wall. (If the distance of separation is less than three feet between two structures, they shall be deemed to be "attached".)

The Code provides for different setbacks and requirements for attached v. detached structures. The purpose of this definition is to require a separate distance which is meaningful, in terms of visual separation between structures. Three feet is the distance separation for structures by the Building Code without fire wall requirements.

Dwelling Unit, Secondary:. A second dwelling unit, either attached or separate, located on a lot already containing a dwelling unit, which complies with LOC 50.30.010. The following dwelling configurations

shall also constitute a secondary dwelling unit regardless whether the occupants of the second dwelling unit are a part of the family of the occupants of the primary dwelling unit:

a. A detached accessory structure that contains all of the elements of a dwelling unit within the accessory structure and the accessory structure complies with LOC 50.30.010, or

b. A portion of the primary structure that is physically separated by means of a wall or other permanent barrier, so that the usual and customary use is as two dwelling units, not as a single, interconnected housekeeping unit, and one of the portions of the dwelling structure that contains the elements of a dwelling unit complies with LOC 50.30.010.

The definition title is changed from "Secondary Dwelling Unit" to "Dwelling Unit, Secondary" as staff finds that it is more likely thought of in the area of the definition of "dwelling unit" than "secondary." The definition current is:

> Secondary Dwelling Unit. A second dwelling unit, either attached or separate, located on a lot already containing a dwelling unit, which complies with LOC 50.30.010

Currently a secondary dwelling unit is really only triggered when the structure is used for a secondary *dwelling – for a second "family"*. There are examples of where the same facilities would not be a secondary dwelling unit because the *occupancy* does not result in a separate housekeeping for a second "*family"*. "Family", means not more than five persons not so related (in reference to relation by blood, marriage, etc.) associated living together in a dwelling unit as a single housekeeping unit." This amendment retains the *use* of a dwelling structure as a secondary dwelling unit – two separate housekeeping units –constituting a secondary dwelling unit. However, this amendment also declares a "secondary dwelling unit" to exist based on configuration, rather than current occupancy. A dwelling unit could have two stoves in it, either in the same room or in separate rooms in the house; same with sleeping facilities, eating facilities, etc. This conforms with current staff interpretation that a solid wall delineates a secondary dwelling unit, regardless of the housekeeping relationship between the occupants of the portions of the structure(s) that contain the necessary elements of a dwelling

Floor Area. The combined ~~floor~~ square footage area (measured from the exterior of the surrounding exterior walls, or if under a roof, measured from interior wall) ~~of a building or portions thereof~~ of all stories of a building excluding attic (the unfinished space between the ceiling joists of the top story and the roof rafters), vent shafts, court yards, ~~enclosed or covered parking areas~~garages, allowable projections, decks, patios, uncovered exit stairs and uncovered, above-grade driveways. Where a square footage limitation is imposed by this Code upon a building or structure, the method of measuring the square footage shall be presumed to be by "floor area" unless otherwise stated.

This addition generally conforms to existing practice and clarifies that "floor area" is all square footage measured from the outside of the exterior walls, inward, except as portions listed are excluded. Specifically, this conforms with the current practice of measuring the area in the same manner as lot coverage. (In a case where GFA was used for parking calculation, based upon the different text of GFA, the area was measured *from within the surrounding exterior walls*.) Measuring the different areas from inside the walls and outside of the walls is confusing, and is not the method that either applicants or staff have been using to calculate the area of a building for floor area purposes.

External uncovered stairs are not considered part of the floor area because they not within the exterior walls, but interior stairs, whether covered or not, are considered part of the floor area.

Interpretation Note: the floor area of internal stairs were previously counted only once - essentially from "top down" view. But the definition counts the floor area of the stories, determined by measuring the exterior dimensions of the building, and then listing the allowable deductions; therefore there should be no adjustment for internal stairs. Floor area is used for purposes of calculating floor area ratio and for parking purposes, which presumably takes into account the "common areas". Adoption of this amendment would legislatively affirm that the manner of calculating the Floor Area should be as set forth in the definition, rather than continuing the past practice of excluding internal stair areas.

The definition of "private garage" includes both enclosed and covered parking structures.

Because Gross Floor Area's definition was similar to floor area, excepting exclusions for vent shafts, court yards, enclosed or covered parking areas, and Staff did not see a reason for this distinction to continue, GFA is proposed for deletion and "floor area" would be applied in both instances in which floor area and GFA were applied. This amendment would also establish "floor area" as the method of measuring square footage of a building, unless otherwise specified.

This amendment also excludes unfinished attics from "floor area".

Floor Area Ratio (FAR). The ratio of the floor area to the ~~net buildable area~~ lot size. The greater the ~~ratio~~FAR, the greater the floor area relative to the size of the lot. For example, a building occupying one-fourth of the net site areas has a FAR of 0.25:1, or 0.25; adding a second floor to the same building increases the FAR to 0.50:1, or 0.5.

The exclusions relating to floodplain, slope, known landslide areas and stream buffers in "Net Buildable Acre" are inconsistent with the development rights provided in those Development Standards. For example, although land may be in a floodplain, there are methods to build within the flood plain, e.g., elevate the lowest habitable floor 1 foot above the flood level. Because these areas are buildable under the Development Standards, it is inconsistent to exclude their areas from the net buildable acre calculations. However, the historic Planning Dept. practice has been to apply only the street area exclusions from Net Buildable Acre for purposes of FAR, but not apply the other exclusions under Net Buildable Acre. Thus, in point of fact, the methodology has been to apply the Lot Coverage area determination. However, staff believes that this past practice should be changed so that the FAR is applied based on the lot's area, rather than upon some larger area, e.g., in planned subdivisions, the *project's* area (less street area) was used to determine the maximum numerical floor area, and the applicant could then allocate the floor area among the various lots. Planning staff believes that this is unnecessary, given that the floor area ratio is already based inversely upon lot size – the smaller the lot, the higher the floor area ratio allowed.

Guest House. An accessory structure of less than ~~400~~ 800 square feet with no cooking or kitchen facilities, used for occasional temporary lodging of persons, and for which no payment or compensation is given in whole or part for lodging or use of the guest house.

The increase in square footage is proposed as conforming with the maximum size permitted for accessory structures. Since the original adoption of this definition, the Code has established maximum sizes for accessory structures.

The common definition of "guest house" includes bed and breakfasts, and other forms of temporary lodging. That is not, however, the original intent, as that would be a primary use of property, not an accessory use. See LOC 50.11.010, as compared to LOC 50.14.005(3). As the definition currently exists, it would really apply to any type of accessory structure, regardless of transient lodging.

Height of Building. The vertical distance above a reference point measured to the coping of a flat roof or to the deck line of a mansard roof or to the highest point of the gable of a pitched or hipped roof.

The reference points are determined as follows:

a. If, for purposes of construction of a structure, an artificial elevation of the ground surface results: the elevation of any ground surface prior to construction at or within the exterior wall of the building.

b. If, for purposes of construction of structure, there is an alteration or artificial lowering of the ground surface: the elevation of any ground surface after construction at or within the exterior wall of the building. See Appendix 50.02.005–A.

c. On Lots within the Flood Management Area:

(1). The elevation of any ground surface at the exterior wall of the building prior to construction of any structure which artificially elevates the ground surface, except that if the structure elevates the ground surface to the minimum required for the purpose of raising the floor level above the base flood elevation consistent with LOC Article 50.44, then the reference point shall be the elevated ground surface.

This amendment clarifies that the height is limited to the minimum needed to comply with the Flood Management Area requirement.

(2) Waterfront Cabanas (WR) Zone: the mean water level surface (elevation 98.6 ft. (NGVD 29) [102.1 [NAVD 88]) of Oswego Lake.

This methodology is brought over from LOC 50.06.055(4), so that the methodology of establishing the height of building for different zones / circumstances is grouped in one location, the definition section. The datum point reference is added for clarity of the method of measurement of the Oswego Lake mean water level. (The new FEMA maps use NAVD 88, and the difference between NGVD and NAVD is 3.5'.).

d. On Lots Within Planned Developments: For the purposes of determining building height, natural or unaltered ground surface shall mean: The elevation of the existing ground surface or the existing ground surface resulting from a prior approved planned development at the time of building permit application.

This definition was moved from "Lots, Sloped". Originally, the definition of "Lot, Sloped" was a part of the Building Height definition. When it was moved into its own definition, the special building height provision for planned developments was carried over with the Sloped Lot definition, although it really relates to both Sloped Lot and Flat Lot.

Exception: The ground surface under a window well that complies with the following dimensions shall be deemed to be the same as the adjacent ground surface:

a. Not exceeding 3' x 6', if the window well is required by the Building Code for exit of the room in which the window is located; and

b. Not exceeding 2' x 6', if the window well is not required by the Building Code for exiting purposes; and

c. The cumulative width of the window wells shall not exceed 25% of the width of the façade of the structure.

This window well exception to the Height of Building is to address the need for basement bedrooms to be able to have exitable windows to reach the ground, without resulting in the bottom of the window well becoming the "ground surface" for purposes of measuring the building height at the window well. This also allows window wells for air/light purposes for basement windows.

Lot Coverage

The ratio of A to B where A is the area of ~~the polygon formed by the surrounding exterior walls of~~ all structures or portions thereof over 30 inch in height ~~with or without exterior walls~~ (See Appendix 50.02.005-D), but exclusive of:

This amendment eliminates the confusion as to whether it applied only to structures with exterior walls or not, and conforms to existing interpretation that lot coverage included all area upon which a structure greater than 30" high was located.

1. ~~-~~vent shafts,
2. portions of eaves that extend 2 feet or less from exterior walls of the building ~~and~~

This amendment codifies the historical practice of not counting the first 2 feet of an eave in the lot coverage. This arose because eaves are permitted to extend into a yard by 2 feet, and that exemption has been applied to the lot coverage calculation method as well.

3. open-roofed courtyards,
4. flowerboxes not exceeding two feet in depth and 110% of the width of the adjoining window / door;
5. decorative metal balconies, i.e., wrought iron, not exceeding two feet in depth and 110% of the width of the adjoining window / door;
6. arbor or trellises used as a support for climbing or hanging plants. The trellis may have side(s) or a roof which do not exceed 75% opacity, except if a trellis side is also a side of a building, then that side is not subject to the 75% opacity requirement. ~~;~~

This amendment also exempts small (less than 2' wide) decorative flowerboxes and metal balconies that are adjacent to door and windows, as well as certain trellises, from the lot coverage calculations.

7. Boat houses;

Reformat. Current code excludes boat houses from lot coverage calculation.

8. Fences and retaining walls.

Exclusion of the area of fences and retaining walls conforms to the historical interpretation.

and

B is the gross acreage of the site excluding, ~~areain street right-of-way, private streets and access easements (calculated in the same manner as provided in "Net Buildable Acre").~~

Net Buildable Acre is proposed to be deleted, because "net developable acre" is the same, and if so, then the reference to "net buildable acre" should be changed to "net developable acre".

"Access easements" is deleted to include the exclusion now existing in "net buildable acre". Further Staff consideration recommends that "private streets" also be excluded because of the similarity of private streets and access easements. If public right of way is the only exclusion, it is not needed as an exclusion because "lot" does not include dedicated right-of-way.

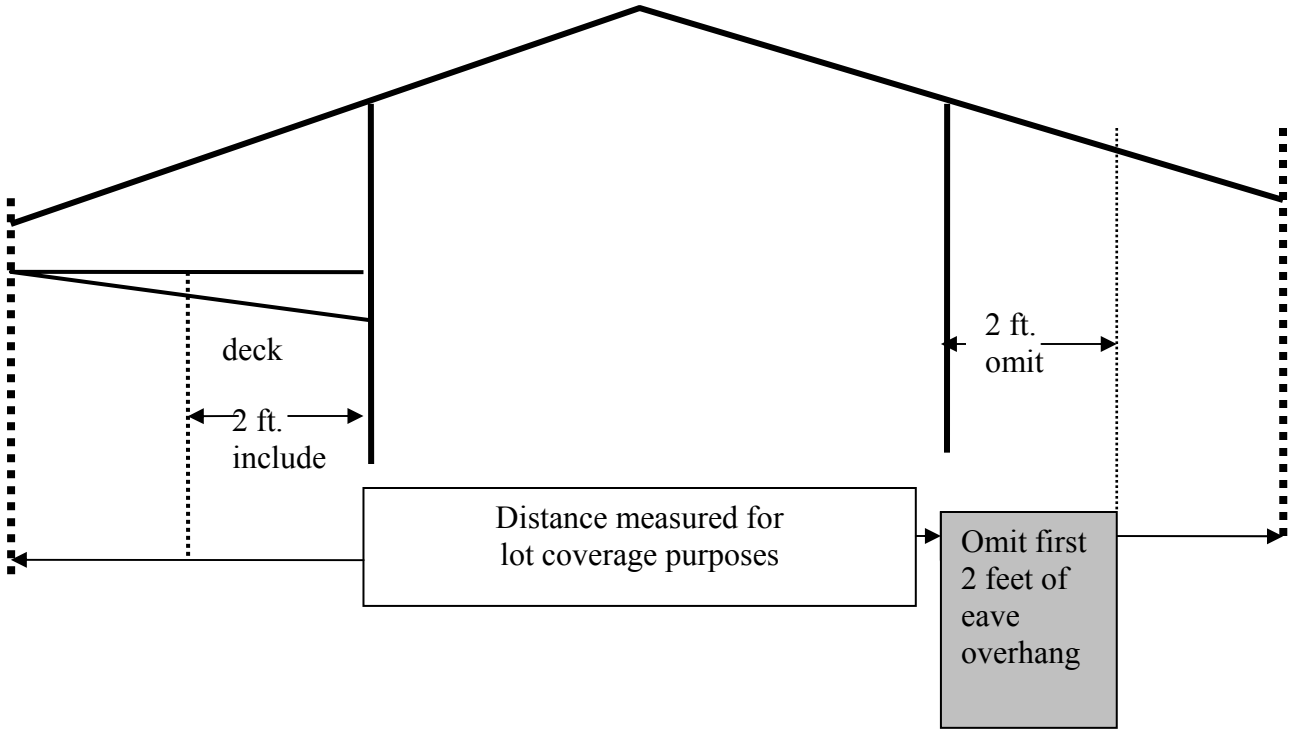
for lots that abut parcels that constitute Owego Lake other than in the WR zone, the portion of the lot that lies below the mean water level surface (elevation of 98.6 ft. (NGVD 29) [102.1 [NAVD 88])), starting at the property line(s) nearest Oswego Lake and then landward to the 98.6 feet (NGVD 29) [102.1 [NAVD 88]) elevation line.

This amendment excludes from the lot area component that portion of lots abutting Oswego Lake that are below the mean water level. The purpose of lot coverage is to address the percentage of *land* that is covered by structures.

~~Boat houses shall not be included in lot coverage calculations~~

Reformatted. Included above in the "A" component.

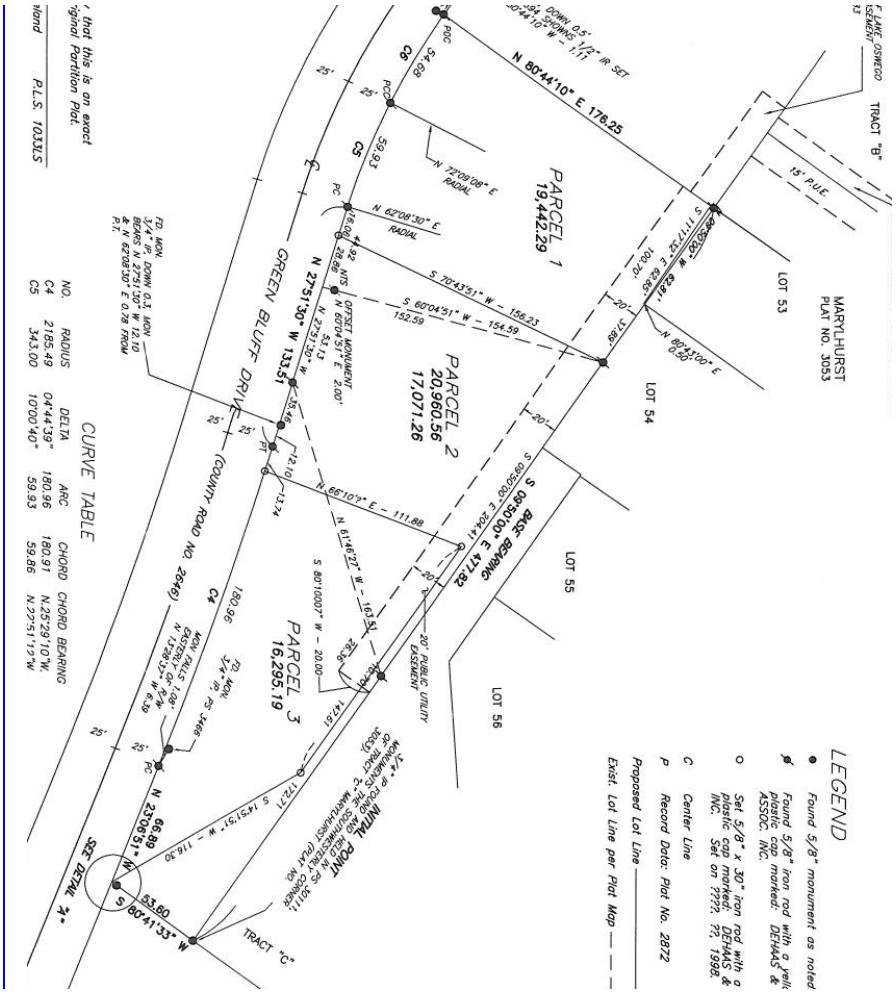
Appendix 50.02.005-D Definitions - Lot Coverage



~~**Lot Depth**. The horizontal distance from the midpoint of the front lot line to the midpoint of the rear lot line, except for a flag lot, which shall be measured from the mid-point at the front lot line of the flag area. In the case of a triangular lot, the lot depth is the horizontal distance from the midpoint of the front lot line to the furthest most intersection of the side lot lines. In the case of a through lot, the lot depth is the horizontal distance from the midpoint of one front lot line to the other front lot line. (See Appendix 50.02 – B)~~.

Minimum "lot depth" requirements are proposed to be eliminated. In many cases, compliance with the current lot depth requirement is an exercise in creativity, creating front and rear lot lines of varying width and offset from each other so that the "slant distance" between the two midpoints is sufficiently separate; however such creativity, although meeting the code requirement, accomplishes nothing in terms of an actual depth requirement. Further, there are instances in which there is NO lot depth because the lot does not have a rear lot line, e.g., a reverse triangle lot, where there is only a front and side. Staff believes that the requirement for "lot depth" has been an academic exercise, with no real effect upon the compatibility of the lot configuration to the neighborhood, or to the neighbors. Preserving the lot width requirement will retain the minimum lot width, and likely width of the front façade of the structure, to preserve the streetscape.

See below for an example of "conforming" lot depth in Buley, LU 06-0034.



The following definitions are taken from the American Planning Association's Planner's Dictionary:

■ **Lot Depth** - The mean horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines. *(Quincy, Mass.)*

The horizontal distance for the midpoint of the front-lot line to the midpoint of the rear-lot line, or to the rear most point of the lot where there is no rear-lot line. *(Newport Beach, Calif.; Santa Rosa, Calif.)*

The average horizontal distance between the front lot line and the rear lot line. *(Wood River, Ill.)*

The mean horizontal distance between the front and rear lot line. *(North Liberty, Iowa; Perryville, Mo.)*

■ **Lot Depth, Mean** - The depth of a lot measured on a line approximately perpendicular to the fronting street and midway between the side lines of such lot. *(Concrete, Wash.)*

■ **Lot Depth, Minimum** - The mean horizontal distance between the front lot line and the rear lot line of a lot, measured within the lot boundaries. *(Normal, Ill.)*

Net Developable Acre. Gross acreage (at 43,560 square feet per acre) of residentially designated land, including Density Transfer Acreage, less:

- ~~-~~the area in street right-of-way or access easements, except that the area of an access easement created by a minor partition shall not be deducted. For public streets, use the actual acreage if known or 20% of the gross acreage. For private streets use actual acreage if known or 40 foot right-of-way. For vehicular access easements use actual acreage of easement; and;~~-~~
- public open space easement or dedication, if accepted by the City.

This amendment combines the *inclusion* of minor partition easements as part of the developable acre, akin to "net buildable acre," which is proposed for repeal. Note: as a part of the Infill recommendations, staff is proposing that this be eliminated.

This amendment clarifies that "access easement" in this context was to refer to vehicular access, i.e., shared driveway.

This amendment reflects the exclusion of "public open space and parks" from Net Buildable Acre (which is being repealed and collapsed into Net Developable Acre. If a portion of the property is accepted as public open space or park, either by easement or dedication, this area is no longer "developable" and should be deducted from the "net developable acre" akin to public street right-of-way.

~~**Net Buildable Acre**~~

~~Net Buildable Acre. The residentially designated land remaining in a gross acre of 43,560 square feet after the following areas have been deducted:~~

~~a. Area in street right-of-way, private street, or access easements, except that the area of an access easement created by a minor partition shall not be deducted. For public street, use the actual acreage if known or 20% of the gross site area. For private street use actual acreage if known or 40 feet right-of-way. For access easement use actual acreage of easement.~~

~~b. Acreage in 100-year floodplain as shown on U.S. Army Corp of Engineers flood maps.~~

~~c. Acreage of over 25% slope.~~

~~d. Acreage in known landslide areas.~~

~~e. Acreage in stream buffer area of major stream corridors including wetlands located therein.~~

~~f. Acreage in public open space and parks.~~

It was initially thought that this section should be amended by (1) deleting "residentially designated land", and (2) deleting subsections (b) thorough (f). The reasons for those amendments is discussed below. However, once those sections of the definition are deleted, the definition then becomes identical with "net developable acre", except that the area of access easements created by a minor partition is not deducted which is what Net Buildable Acre is used for), and there is no reason to have two terms which are similarly defined.

Net Developable Acre. Gross acreage (at 43,560 square feet per acre) of residentially designated land, including Density Transfer Acreage, less the area in street right-of-way or access easements. For public streets, use the actual acreage if known or 20% of the gross acreage. For private streets use actual acreage if known or 40 foot right-of-way. For access easements use actual acreage of easement.

1. Although the definition currently suggests that Net Buildable Acre is a term applied only to "residentially designated land", it is expressly applied in a commercial context:

   a. LOC 50.11.020(13)(e) [Special development requirements relating to the Boones Ferry Road / Jean Road Site]: "A minimum of 20% of the net buildable area shall be devoted to landscaping.".
   b. LOC 50.47.010 [Landscaping - Standards of Approval]:
      1. Commercial and industrial development, other than in the Office Campus zone, shall provide a minimum of 15% of net buildable area in landscaping and/or open space visible from off-site, including courtyards, planters, raised beds, espaliers, etc. Office campus and public building developments shall provide a minimum of 20%.

2. The subsection (b) through (e) exclusions relating to floodplain, slope, known landslide areas and stream buffers are inconsistent with the development rights provided in those Development Standards. For example, although land may be in a floodplain, there are methods to build within the flood plain, e.g., elevate the lowest habitable floor 1 foot above the flood level. Because these areas are buildable under the Development Standards, it is inconsistent to exclude their areas from the net buildable acre calculations. This conflict is addressed through a change in the definition of Floor Area Ratio, so that it does not refer to Net Buildable Acre.

Subsection (f) should be deleted because once public open space / park land is dedicated, it is no longer part of the developable area of private property.

Note: if subsection (e) is not deleted as proposed above, then the following amendment is recommended to subsection (e):

e. Acreage in stream buffer area of major stream corridors including wetlands or RP District and its buffer (but not including the area of any construction setbacks) located therein.

The term "major stream corridor" is a applied from LODS 3. This standard is applicable under the transition rules of the Sensitive Lands Article (LOC 50.16) until all of the contested sites under LOC 50.16 inventory have been heard by the Planning Commission. However, for those sites which are not subject to LODS 3 -- those sites which have been designated under the Sensitive Lands Article as an RP district, the comparable area would be the RP district and its buffer.

Secondary Dwelling Unit. ~~A second dwelling unit, either attached or separate, located on a lot already containing a dwelling unit, which complies with LOC 50.30.010~~See "Dwelling Unit, Secondary.".

This amendment moves (and revises) the definition of Secondary Dwelling Unit to be located near "Dwelling Unit", as that is where staff and the public look for it to be located.

Article 50.05
ZONING DESIGNATIONS, BOUNDARIES AND MAPS

New Section

Section 50.05.012 Effect of Multiple Zone Designations on Lot.

If a lot has been designated with both a commercial zone and a residential zone, e.g., R-0/EC, the requirements of residential density and FAR relating to the designated residential zone shall apply for residential uses on the lot; the commercial zone requirements shall be applied for all other purposes.

There are areas within the City that are "split zones", i.e., R-0/EC, and it has not been clear how the zone standards of each zone are to be applied. This amendment applies the residential density and FAR requirements of the residential zone for residential uses, and all other commercial zone standards are applied regardless whether the use is commercial or residential.

Article 50.06
RESIDENTIAL - MEDIUM AND HIGH DENSITY
R-0, R-2, R-3, R-5 AND WR ZONES.

Section 50.06.025 Minimum Density (High Density Zone)

1. When subdivisions or multi-family dwellings are proposed in the R-0 Zone, a minimum density of 20 lots or dwelling units per acre is required. When subdivisions or multi-family dwellings are proposed in the R-2 Zone, a minimum density of 12 lots or dwelling units per acre is required. For purposes of this section, this number is computed by multiplying the net developable acreage by either 20 or 12 per the applicable zone. The result shall rounded up for any product with a fraction of .5 or greater and rounded down for any product with a fraction of less than .5. The requirements of this subsection are subject to the exceptions contained in LOC 50.22.100.

This addition of multi-family is intended to fill a loophole - from a density standpoint, there is no difference between subdivisions and multi-family units.

2. When subdivisions or multi-family dwellings are proposed in the R-3, R-5, or WR Zones, a minimum density of 80% of the maximum allowed by the zone is required. For purposes of this subsection, the number of lots or units required shall be determined by dividing the net developable acre ~~square footage~~ by the minimum lot size or ~~per~~ units required in the underlying zone, and multiplying this number by .8. The result shall be rounded up for any product with a fraction of .5 or greater and rounded down for any product with a fraction of less than .5. The requirements of this subsection are subject to the exceptions contained in LOC 50.22.100.

This would be consistent with the DD zone (LOC 50.09.022) and with 50.06.030

Section 50.06.040 Lot Coverage

1. Lot coverage shall not exceed the maximums set forth in Table 50.06.040, below:

TABLE 50.06.040

Maximum Lot Coverage		
Zone	**Dwelling Type**	**Maximum Lot Coverage**
R-0		~~40~~55%
R-2	Single family detached	35%
	Row house	55%
	Duplex	55%
	Other Structures	50%
R-3		50%
R-5	Single family detached: ≤ 22 feet in height	45%
	Single family detached: > 22 feet in height	35%
	Single family attached	50%
	Other Structures	50%
WR		100%

1. The R-0 Zone is the City's "densest" zone, with no minimum lot area, and 20 units per acre. The lot coverage for R-0 should be at least equal to lot coverage in the R-2 zone.

Section 50.06.060 Structure Design

1. Front Setback Plane in the R-5 Zone.

a. Front Setback Plane. The front profile of a structure shall fit behind a plane that starts at the front yard setback line and extends upward to 20 feet in height, then slopes toward the rear of the lot at a ~~minimum~~ slope of 6:12, up to 28 feet in height at the peak. In the case of through lots, the front setback plane is applied on each frontage, and

EXCEPTION: Any individual roof form may penetrate the front setback plane if it is less than one-third of the total structure width. Two separate and distinct roof forms, such as dormers, may project into the front setback plane rearward of the front setback line if they are less than one-half of the total structure width at 20 feet in height.

The slope of 6:12 establishes the line behind which the dwelling is to be located. The actual dwelling roof line can be greater than 6:12, depending on how far back it sits from the front setback line.

In the case of through lots, this clarifies that the front setback plane is applied as to each of the front yards of the through lot.

This exception does not apply to portions of structures that are forward of the front setback line, i.e, porches.

There is one change made to the text of this exception: one-third of the total structure width. This technically requires that the 1/3 measurement be based solely upon the width of the structure at a particular height, rather than the structures width (which means its width at its widest point on the particular elevation). This could result in some manipulation of the width of the structure at the particular height by oddly shaped designs (it encourages "top-heavy designs" at the 20 foot height. It is also difficult to apply "on the ground" because not all houses are perpendicular to the front lot line and changes in slope within the front elevation. Staff has not been applying the measurement based on the 20 foot height and proposes this amendment to conform to its existing practice with regard to determining the measurement for the exception based upon the structure's width at its widest point, rather than at a specific height line. This section must be coordinated with proposed infill standards.

b. As to any portion of the structure that is in front of the front setback line, that portion shall fit below the extension of the Front Setback Plane, as illustrated in Appendix 50.07~~-C~~.040-A.

Where a portion of the structure extends into the front yard, e.g., front porch, this amendment extends the application of the front yard setback plane to that forward part of the structure.

~~b. Exceptions to the front setback plane. Any individual roof form may penetrate the front setback plane if it is less than one-third of the total structure width at 20 feet in height. Two separate and distinct roof forms, such as dormers, may project into the front setback plane if they are less than one-half of the total structure width at 20 feet in height.~~

This exception has been reformatted to be in subsection (a), so that it relates only to that subsection.

c. The front setback plane shall not apply to flag lots.

This amendment exempts the front setback plane from flag lots. This exemption already exists in the R-6 zone (LOC 50.07.040), and reflects the purpose intended -- that the *streetscape* be protected by the front setback plane, not houses that are on lots behind the frontage lots. This section must be coordinated with proposed infill standards.

2. Maximum Side Yard Plane. The side elevation of a structure must be divided into smaller areas or planes to minimize the appearance of bulk when viewed from neighboring properties or a side street. When the side elevation of a primary structure is more than 500 square feet in area, the elevation must be divided into distinct planes of 500 square feet or less. For the purpose of this standard, areas of side-yard wall planes that are entirely separated from other wall planes are those that result in a change in plane

such as a recessed or projecting section of the structure, that projects or recedes at least 2 feet from the adjacent plane, for a length of at least 6 feet.

Article 50.07
RESIDENTIAL - FIRST ADDITION DISTRICT (R-6) ZONE

Section 50.07.020 Lot Size, Lot Dimensions, Density Transfer

1. Except as otherwise provided in this section, the minimum lot size and dimensions in the R-6 Zone are as follows:
   a. Minimum lot area per single family unit: 6,000 sq. ft.
   b. Minimum lot width ~~at the building line~~: 50 feet
   ~~c. Minimum lot depth: 100 feet.~~
2. Lot sizes and dimensions may be reduced for projects reviewed as planned developments, pursuant to Article 50.17, and as provided by subsection (3) of this section. However, the overall density allowed on the site may not be exceeded except as allowed by LOC 50.08.020 (2) and subsection (3) of this section.
3. Up to a 25% reduction in minimum required lot area for each dwelling unit shall be allowed in the R-6 zone to permit the relocation of a designated historic landmark, when relocation has been approved by the designated hearing body in conformance with the provisions of LOC Chapter 58.
4. For projects on properties subject to an RP or RC designation, lot areas may be modified as provided in LOC 50.16.045.

Building line is used in the CDC but is not defined. It is actually another name for front setback line. Rather than adding a definition of "building line", it is thought that the references to "building line" should be changed to "front setback line", so multiple definitions do not exist for the same thing.

Minimum "lot depth" requirements are proposed to be eliminated. In many cases, compliance with the current lot depth requirement is an exercise in creativity, creating front and rear lot lines of varying width and offset from each other so that the "slant distance" between the two midpoints is sufficiently separate; however such creativity, although meeting the code requirement, accomplishes nothing in terms of an actual depth requirement. Further, there are instances in which there is NO lot depth because the lot does not have a rear lot line, e.g., a reverse triangle lot, where there is only a front and side. Staff believes that the requirement for "lot depth" has been an academic exercise, with no real effect upon the compatibility of the lot configuration to the neighborhood, or to the neighbors. Preserving the lot width requirement will retain the minimum lot width, and likely width of the front façade of the structure, to preserve the streetscape.

Article 50.08
RESIDENTIAL - LOW DENSITY R-7.5, R-10, AND R-15 ZONES

Section 50.08.025 Lot Size, Lot Dimensions, Density Transfer

1. Except as otherwise provided in this section, the minimum lot area for each dwelling unit and minimum lot dimensions for each zone are as follows:

		Lot width	**~~Lot~~**

Zone	Lot Area	~~at building line~~	~~depth~~
R-7.5	7,500 sq. ft.	50 ft.	~~100 ft.~~
R-10	10,000 sq. ft.	65 ft.	~~100 ft.~~
R-15	15,000 sq. ft.	80 ft.	~~100 ft.~~

Minimum "lot depth" requirements are proposed to be eliminated. In many cases, compliance with the current lot depth requirement is an exercise in creativity, creating front and rear lot lines of varying width and offset from each other so that the "slant distance" between the two midpoints is sufficiently separate; however such creativity, although meeting the code requirement, accomplishes nothing in terms of an actual depth requirement. Further, there are instances in which there is NO lot depth because the lot does not have a rear lot line, e.g., a reverse triangle lot, where there is only a front and side. Staff believes that the requirement for "lot depth" has been an academic exercise, with no real effect upon the compatibility of the lot configuration to the neighborhood, or to the neighbors. Preserving the lot width requirement will retain the minimum lot width, and likely width of the front façade of the structure, to preserve the streetscape.

2. Lot sizes and dimensions may be reduced for projects reviewed as planned developments, pursuant to LOC Article 50.17, and as provided by subsection (3) of this section. However, the overall density allowed on the site may not be exceeded except as allowed by LOC 50.08.020 (2) and subsection (3) of this section.

3. Up to a 25% reduction in minimum required lot area for each dwelling unit shall be allowed in the R-7.5, R-10 and R-15 zones to permit the relocation of a designated historic landmark, when relocation has been approved by the designated hearing body in conformance with the provisions of LOC Chapter 58.

4. For projects on properties subject to an RP or RC designation, lot areas may be modified as provided in LOC 50.16.045.

Building line is used in the CDC but is not defined. It is actually another name for front setback line. Rather than adding a definition of "building line", it is thought that the references to "building line" should be changed to "front setback line", so multiple definitions do not exist for the same thing.

Article 50.13
INDUSTRIAL ZONES

Section 50.13.010 Permitted Uses; Industrial Zone

1. Manufacturing, repairing, compounding, processing or storage and accessory office use.
2. Dwelling for a caretaker or watchman working on the property.
3. Railroad tracks and facilities such as switching yards, spur or holding tracks, freight depots.
4. Wholesale distributor or outlet.
5. Commercial uses which require large land areas for display or storage is such as:

a. lumber yards,
b. nursery stock production and sale,
c. transportation facilities,
d. equipment rental agencies,
e. car washes,
f. vehicle sales and rental, and
g. boat sales; boat repair; boat storage.

Boat storage is expressly added for clarity. Under the "similar use" analysis, staff believes that boat storage is similar to RV storage, whether for a commercial or non-commercial purpose, but is placed here with other boat uses.

h. Recreational vehicle storage.
i. Truck and trailer rental, and sales of accessories.

Moved from subsections (8) and (9) below.

6. Major and minor public facilities.
7. Commercial recreational facility wholly conducted within an enclosed structure.
8. ~~Recreational vehicle storage.~~ [reserved].

Moved to subsection (5) above.

9. ~~Truck and trailer rental, and sales of accessories.~~ [reserved].

Moved to subsection (5) above.

10. Services to buildings (including dwellings), cleaning & exterminating.
11. Laundries and cleaning places, greater than 3,000 square feet.
12. Upholstery shop.
13. Sign shop.
14. Duplicating, address, blueprinting, photocopying, mailing and stenographic services.
15. Equipment service and repair places, appliance small engine.
16. Vehicle repair shops (screened by sight-obscuring fence from public right-of-way).
17. Auto service station (primary use only).
18. Printing, publishing and lithographic shop.
19. Research and testing facilities.
20. Medical and dental laboratories.
21. Veterinarian's facilities, totally enclosed.
22. Other veterinarian facilities.
23. Pet Care, Daily

The demand for "doggie day care" and similar daily pet care facilities has grown in the past several years, to the extent where staff believes that it should be expressly addressed in the code, in terms of what zones it should be permitted in. The percentage limitation of overnight boarding is to retain a distinction between "day care" and "kennel", due to the different traffic and noise effects.

~~23~~24. Ambulance service.

~~24~~25. Towing service and tow yard.
~~25~~26. Artists studios, using industrial tools.
~~26~~27 Vocational schools.
~~27~~28. Offices that provide employment and secretarial services for industry.
29. Crematorium

Crematoriums are listed as a part of the definition of "cemetery". But, with it is thought that crematoriums are also compatible with industrial uses, and thus this specific use should be permitted in the Industrial Zone.

Section 50.13.020 Permitted Uses, Industrial Park Zone

1. Research facilities, testing laboratories.
2. Facilities for the manufacturing, warehousing, processing or assembling of products.
3. Offices accessory to ~~manufacturing, warehousing or research uses.~~any use permitted in this section, excluding offices accessory to Professional Office space.

The amendment conforms the accessory offices uses to the primary uses and vice versa. This amendment conforms to Planning Division's interpretation that if the accessory use is permitted, that it is implied that the primary use is permitted. Further, this amendment authorizes offices as accessory to all of the primary uses.

4. Vocational schools.
5. A dwelling for caretaker or watchman.
6. Recreational vehicle storage
7. Boat storage.

Boat storage is expressly added for clarity. Under the "similar use" analysis, staff believes that boat storage is similar to RV storage, whether for a commercial or non-commercial purpose.

~~7~~8. Major and minor public facilities.
~~8~~9. Professional office space not to exceed 15% of gross site area.
~~9~~10. Remanufacturing or repair of vehicle engines and electrical systems provided that:
   a. The use is limited to 18 or less service bays.
   b. The use is located in an enclosed building.
   c. No outdoor storage of parts, materials, or partially or totally dismantled vehicles is allowed.
   d. The provisions of LOC 50.13.040(4) are met.
~~10~~11. Incidental retail uses.
~~11~~12. Services to buildings (including dwellings), cleaning & exterminating.
~~12~~13. Laundries and cleaning places, less than 5,000 square feet in floor area.
~~13~~14. Upholstery shop, less than 5,000 square feet in floor area, totally enclosed within a building.
~~14~~15. Sign shop, less than 5,000 square feet in floor area, totally enclosed within a building.
~~15~~16. Duplicating, address, blueprinting, photocopying, mailing and stenographic services.
~~16~~17. Printing, publishing and lithographic shop.
~~17~~18. Medical and dental laboratories.
~~18~~19. Veterinarian's facilities, totally enclosed.
20. Pet Care, Daily.

The demand for "doggie day care" and similar daily pet care facilities has grown in the past several years, to the extent where staff believes that it should be expressly addressed in the code, in terms of what zones it should be permitted in. The percentage limitation of overnight boarding is to retain a distinction between "day care" and "kennel", due to the different traffic and noise effects.

~~19~~21. Ambulance service, less than 5,000 square feet in floor area, totally enclosed within a building.

~~20~~21. Artists studios, using industrial tools.

~~21~~22. Offices that provide employment and secretarial services for industrial park uses.

23. Crematorium

Crematoriums are listed as a part of the definition of "cemetery". But, with it is thought that crematoriums are also compatible with industrial park uses, and thus this specific use should be permitted in the Industrial Park Zone.

Article 50.14
ACCESSORY AND TEMPORARY USES

Section 50.14.005 Accessory Uses.

1. a. Accessory uses are allowed in conjunction with the principal use and shall comply with the requirements of this section and all requirements for the principal use, except where specifically modified by this Code.

What is [EPB2]the time frame in examining what is an "accessory use"? – then (at the time the original principal use was authorized) or now (as accessory uses have evolved with the principal use). For example – gas stations at grocery stores. Should we have a definition of "accessory"?

b. Heat pumps[EPB3], or similar mechanical equipment shall meet the required setbacks of the zone, except as provided under subsection (5) below.

This amendment clarifies that heat pumps and similar mechanical equipment are required to meet the zone setbacks, except that in residential zones the setback may be reduced under subsection (5). This is consistent with current practice.

2. A greenhouse or hothouse may be maintained accessory to a dwelling only if there are no sales.

3. A guesthouse may be maintained accessory to a dwelling provided there is no kitchen space or cooking facilities in the guesthouse and the square footage is less than ~~400~~ 800 square feet.

The increase in square footage is proposed as conforming with the maximum size permitted for accessory structures. Since the original adoption of this the guest house square footage limitation, the Code has established maximum sizes for accessory structures.

4. Pool covers shall not exceed 15 feet in height.

5. Reduction of Side or Rear Yard Setbacks for Accessory Structures.

This amendment makes formatting changes to clarify the applicability of reductions to regular and flag lots, and to the applicability of the exceptions.

a. Regular Lot. A side or rear yard setback on a non-flag lot may be reduced to three feet for an accessory structure in a residential zone if the structure complies with the following ~~four~~ criteria:

(1) ~~a.~~ The accessory structure is erected more than 40 feet from any street. For the purposes of this subsection, an alley shall not be considered a street. The side and rear setbacks for a detached garage obtaining access from an alley may be reduced to 3 feet or to the degree the garage maintains access that provides an outside front wheel turning radius of at least 25 feet, whichever is greater.

(2) ~~b.~~ For an accessory structure taller than 3 feet, ~~The~~ the accessory structure is detached from other buildings by 5 feet or more.

Section 50.14.005(5)(b) is problematic for mechanical equipment like AC units, heat pumps and generators. The requirement that these very small accessory structures be located at least 5 feet from any other structure in order to reduce the side and/or rear setback to 3 feet really limits their placement in many instances, particularly older homes with non-conforming setbacks and newer homes that are maxed out. Planning Staff thinks the reason for the 5 foot separation makes sense for larger accessory structures (sheds, greenhouses, etc.) in order to keep a reasonable visual separation, but for these small units, which are usually under 3 feet tall, it doesn't. In order to comply with 50.14.005(5), these noise producing units are actually moved closer to the neighbor than necessary, and often fall right in the middle of a pathway along the side of the house. Staff proposes a change that would exempt mechanical equipment under a certain size (height, width and depth) from the 5 foot separation requirement, while still meeting all the other criteria under 50.14.005(5).

~~c.~~ (3). The accessory structure does not exceed a height of 10 feet nor an area of 600 hundred square feet floor area.

This amendment clarifies that the measure of square footage is floor area.

~~d. The parcel is zoned other than R-6.~~

This is moved to the Exception section below.

b. Flag Lots. A side or rear yard accessory structure setback may be reduced to 6 feet on a flag lot when the above criteria in subsection (a)(1-5) are met.

Without this provision, then the 3' exception would be possible.

c. Exceptions.

The setback exception authorized by ~~this~~ subsection (a) or (b) does not apply to:

(1) ~~setbacks~~ Setbacks required by LOC 50.22.035 (Special Setbacks).

(2). ~~The setback exception also does not apply to n~~Noise producing accessory structures such as heat pumps, swimming pool motors, etc., unless abutting property owners of the proposed site of the proposed noise producing accessory structure agree in writing that said accessory structure may be located within the accessory structure setback exception permitted under this subsection.

(3). The parcel is zoned other than R-6.

This subsection was moved from (d) above.

(4). The accessory structure is not used as a secondary dwelling unit.

A secondary dwelling unit must comply with the "site development requirements of the underlying zone", which does not include this special accessory structure provision. This exception is added to make it clear that an exception under this subsection cannot be used for secondary dwelling units, in accordance with current code.

~~Flag Lots. The setback exception authorized by this subsection does not apply to flag lots. However, a side or rear yard accessory structure setback may be reduced to 6 feet on a flag lot when the above criteria (a-d) are met.~~

6. "Dish" type antenna may only be placed in rear yards, on the ground, and must be screened by landscaping.

7. Except as provided in LOC Article 50.16, boat houses and docks along Oswego Lake and its canals may be placed on a property line.

Article 50.15
Greenway Management Overlay District

Section 50.15.010 Development Review

1. All development within the GM Overlay District shall be reviewed pursuant to the provisions of LOC Articles 50.79~~ – 50.83~~.

LOC 50.79 will determine the category of review: ministerial, minor or major; within LOC 50.79 there are standards which address the criteria. The *procedures* for review of the type of development are addressed by LOC 50.80 – 83, without the need for a cross-reference in the overlay district.

2. In reviewing applications for development in the GM Overlay District, in addition to the requirements of ~~LOC Articles 50.79-50.83~~LOC 50.79.025, and except as provided in subsection (3) below, the ~~Development Review Commission~~reviewing authority ~~–~~shall ~~consider the following objectives~~ determine that the following criteria are met:~~and shall make findings as applicable~~.

1. "for development" is added in order to refer back to what the application is about.
2. "District" is added as that is the complete name of the overlay *district.*
3. The reference to classification and procedural provisions is added to clarify what the applicant is required to meet, in terms of criteria – the provisions relating to *minor* development (as opposed to ministerial or major developments, which are also found in LOC 50.79)
4. The reference to "subsection (3)" is to provide a balancing test criterion, if not all of the factors in this subsection (2) can be met, akin to LOC 50.16.055(4).
5. This amendment clarifies that the "considerations" are applied as criteria, in conformance with historical interpretation.

a. Significant fish and wildlife habitats will be protected.

b. Significant natural and scenic areas, viewpoints and vistas will be protected~~ and enhanced~~.

c. Areas of ecological, scientific, historical or archeological significance will be protected, ~~restored, or enhanced~~ to the maximum extent possible.

d. The quality of the air and water in and adjacent to the Willamette ~~river~~ River will be maintained ~~or enhanced~~ in the development, change of use, or intensification of use of land within the GM Overlay.

e. Areas of annual flooding, water areas, and wetlands will be retained in their natural state to the maximum possible extent to provide for water retention, overflow and other natural functions as well as protect the health, safety and welfare of the public. (Note: Areas subject to the 100 year flood level are also regulated by the Flood Plain Standard.)

f. The natural vegetative fringe shall be maintained ~~or enhanced~~ to assure scenic quality, protection of wildlife, protection from erosion and screening of uses from the river.

g. Areas considered for development, change or intensification of use which have erosion potential will be protected from erosion by means compatible with the natural character of the Greenway.

h. Any ~~Recreational~~ recreational needs proposed by the development will be satisfied ~~by public and private means~~ in a manner consistent with the natural limitations of the land. Conflicts with adjacent land uses will be minimized.

~~i. Public safety and protection of public and private property will be provided to the maximum extent practicable, especially from vandalism and trespass.~~

ij. Non-water related or dependent structures shall be located west of and no closer than 25 ft. to the following setback lines~~:~~:

~~i~~(1). For property located from the northern City limits to the northern bank of Oswego Creek (in George Rogers Park), the setback line is the contour elevation line that establishes the Army Corps of Engineers 50 year flood plain line.

~~ii~~(2). For property located in George Rogers Park from the southern bank of Oswego Creek to the southern boundary of the Park, the setback line is the western edge of the paved pedestrian path.

~~iii~~(3). For property located from the southern boundary of George Rogers Park to the southern City limits, the setback line is the western right-of-way line for Old River Road.

(4). The Compatibility Review Boundary Line becomes the setback line at any point where the above-described setback lines lie to the west of the Compatibility Review Boundary Line.

~~k. Necessary public access will be provided to and along the river including pedestrian, bicycle and water related uses.~~

The objectives have been affirmatively stated as criteria that are to be met. Hence, the language regarding "enhancement" has been eliminated, so that is not read that the applicant must enhance the Greenway. An applicant's burden for a Greenway development is to "do no harm".

Staff recommends eliminating the "public safety and protection of public and private property" and "necessary public access" because, although those may be considerations and objectives the City might like to see in an a development application, that is not a criteria by

Subsection (h) is amended to clarify that the applicant need not provide recreation on the lot in order to meet the criteria, but if it is provided, then it must be done so to minimize impact on the land and adjacent properties.

The new subsection (i)(4) has been formatted so that it now appears as a subsection of (i).

(3) It is recognized that all of the criteria listed in subsection (2) of this section may not be applicable to every site. In some cases, the criteria may conflict on a given site. In such cases, the reviewing authority shall balance the applicable criteria in order to protect the Willamette River, and the resources located along its banks, from the effects of development, to the greatest extent possible.

~~3~~4. To meet the ~~intent of the objectives~~criteria set forth in subsection (2) or (3), ~~the Comprehensive Plan and/or this Code,~~ reasonable conditions may be imposed pursuant to LOC 50.79.040. ~~by the~~

~~Development Review Commission in approving a change of use, development or intensification proposal. Guarantees and evidence may be required of the applicant to provide that such conditions will be or are being complied with.~~

In addition to changing the reference from objectives to critera as stated in subsection (2) or (3), this section eliminates (1) the suggestion that objectives of the Comprehensive Plan are "criteria", and (2) incorporates the "conditions of approval" provisions which generally apply to development permits. Any guarantees and evidence would be as generally provided in the Code.

~~4. In addition to the notification required by LOC Articles 50.80-50.82, the City shall notify the Oregon State Department of Transportation by certified mail immediately upon receipt of a complete application for development, change or intensification of use in the Greenway Compatibility Review Boundary area and shall notify the department of final actions taken on the applications.~~

All of the development activities within the Zone have been classified as either minor or major development, under LOC 50.79. By integrating the procedural requirements for the Greenway Management Overlay District into the standard minor / major classification, the notice process for minor or major developments contains the notice requirement relating to railway notifications.

Section 50.15.015 Permitted Uses.

The following uses are permitted within the GM District.

1. ~~The placing, by a public agency on public lands, of signs, markers, aids, etc., to serve the public or signs on private lands to identify private property. Such signs shall be in conformance with the sign code.~~

Signs are not a "development activity" on the land and the placement of a sign is not a "use" in any zone.

~~2.~~ Activities to protect, conserve, enhance and maintain scenic, historical and natural uses on public lands.

3. Parks and other recreational facilities, including those ~~as~~ designated in the Comprehensive Plan. ~~Any other recreational development shall be reviewed by the Development Review Commission.~~

This amendment allows parks and recreational facilities beyond those that are designated in the Comprehensive Plan to be a use within the overlay district. Review of the uses would be in the manner required by 50.15.010(1).

4. Erosion control operations not requiring a permit from the Division of State Lands.

5. Tree removal ~~The cutting of trees~~ for public safety, erosion control, or personal non-commercial use~~, subject to LOC Article 50.79–50.83 and LOC Chapter 55~~.

This amendment uses the term "tree removal" from LOC Chapter 55, to result in a consistent scope of applicability between LOC 50.15 and LOC Ch. 55, and eliminates the uncertainty of how tree removal is to be removed – ministerial, minor, or major development. Review of tree removal has been classified as a minor development in LOC 50.79.

6. ~~Reasonable emergency procedures necessary to protect an existing use or facility for the safety or protection of persons or property.~~

Emergency procedures are not a "use" of the property and it is addressed as exempt from permit requirements under LOC 50.79.005.

~~7. Maintenance and repair as necessary for the continuance of an allowed existing use or improvement.~~

Maintenance and repair activities are not a "use" of the property and are addressed as exempt from permit requirements under LOC 50.79.005.

~~8. Landscaping, construction~~ Construction of driveways, modifications of existing structures and the construction or placement of such accessory structures or facilities which are usual and necessary to the use and enjoyment of existing improvements ~~and which are established in a manner compatible with the intent of this Code~~.

Landscaping is not a "use" of the property; it is a "development" activity subject to review under LOC 50.15.010(1).

If there is an existing improvement, then its driveways, modifications, and accessory structures which are "usual and necessary" to the use and enjoyment of those improvements are permitted uses, without determining whether the existing improvements were established "in a manner compatible with the intent of the Code." The development will be reviewed against the criteria for development under LOC 50.15.010, to assure compatibility with the Greenway Management Overlay District.

9. Other uses legally existing on December 16, 1982; provided, however, that any change or intensification of such use shall require review as provided by this Code.

10. Single-family dwellings and accessory structures associated with such dwellings.

"Accessory structures" is added for conformity with other zones. See, for example, LOC 50.06.010(1)(c).

Article 50.17
PLANNED DEVELOPMENT OVERLAY

Section 50.17.010 Procedure

1. The establishment of a PD Overlay for projects containing more than one phase shall occur in conjunction with the approval by the ~~Planning Commission~~reviewing authority of an Overall Development Plan and Schedule (ODPS) pursuant to the provisions of LOC Article 50.71. The ODPS shall contain a section which identifies the zone requirements and uses to be applied in the PD Overlay. These requirements may be adopted by referring in the Final Order to existing provisions of this chapter or by creating special zoning standards pursuant to the Planned Development Overlay section. (LOC 50.17.005 to 50.17.025).

It is the Development Review Commission that considers ODPS projects, not the Planning Commission. However, we use the term "reviewing authority" so that if that authority is changed in the future, a separate change to this section is not required.

The ODPS establishes the permitted uses within the project; this amendment reinforces that the ODPS controls the uses within the PD.

2. A request for a PD overlay for a project that will contain only one phase may be considered by the ~~Development Review Commission~~reviewing authority. No ODPS shall be required, but the requirements of subsection (1) of this section for the adoption of zone requirements in the Final Order shall be complied with.

3. Following approval of a PD Overlay, a subsequent request for modification from the underlying zone requirements for any lots within the planned development shall be processed in the following manner:

a. PD Modified At Least One Lot Requirement In Subdivision: If any modifications were made to the above ~~from the underlying~~ zone requirements ~~for lot area, dimensions, setback, residential FAR, garage appearance and location, front building plane, side yard elevation or lot coverage for any lots within the planned development~~, then any subsequent request for modification to these ~~standards~~zone requirements ~~by variance~~ shall be processed either as:

i. ~~a~~A Planned Development permit modification ~~to the development permit granting the Planned Development Overlay~~, pursuant to LOC 50.86.025; no variance (LOC Article 50.68) is permitted; or

ii. ~~further exceptions to the modified underlying zone requirements are permissible through the~~ A Residential Infill Design Review, pursuant to ~~process (~~LOC Article 50.72; to the extent RID Review permits exceptions to certain zone standards, no Planned Development permit modification is required~~) without modification of the Planned Development Overlay~~.

b. PD Modified None of the Lot Requirements In Subdivision: If no modifications were made from the ~~underlying~~ zone requirements ~~for lot area, dimensions, setbacks, residential FAR, garage appearance and location, front building plane, side yard elevation or lot coverage for any lots within the planned development~~, then any subsequent request for modification to the~~se~~ zone requirements ~~of the underlying zone~~ shall be processed as:

i. A Planned Development permit modification to the development permit granting the Planned Development Overlay, pursuant to LOC 50.86.025; or

ii. ~~a~~A variance, pursuant to LOC Article 50.68; or,

iii. A Residential Infill Design Review, pursuant to LOC Article 50.72~~for qualified residential developments, processed according to the provisions of LOC Article 50.72~~.

The purpose of this amendment is to make the process for modification of zone requirements within PDs understandable. This amendment explains that if there was no change by the PD of the underlying zone requirements, the "usual" process of variance or RID apply or PD modification process. If, however, there were any modifications of any of the zone requirements for any of the lots in the subdivision, then either a PD modification is necessary (which would apply the same criteria as for the PD approval - same or better sense of privacy, appropriate scale, and open space [LOC 50.17.015(2)], or a RID exception.

A variance is not available when any lot has been modified in a PD because the developer was supposed to have considered the characteristics of each of the lots in proposing the lot boundaries, and adjusted the zone requirements through the PD to meet the site. Hence, if there is a need to modify zone requirements when the developer already considered the site, that would require a PD modification, and would apply the same criteria as for the PD approval.

The reason a RID exception does not require a PD modification is because (1) the purpose of the RID is to grant exceptions *based on house design* that meet the underlying zone requirements. If the house accomplishes the same effect as the zone requirements established through the PD, no modification of the PD is necessary; and (2) since the RID is based on the house design, if the

house is destroyed, then so too is the exception; a PD modification is based on the lot and topography, and survives the removal of a house.

c. For PD applications filed prior to August 14, 2003, the following standards do not apply:
i. The FAR standards of LOC 50.08.040;
ii. The FAR standards of LOC 50.06.035;
iii. The height exception standards of LOC 50.06.055; LOC 50.07.030; and LOC 50.08.035;
iv. The front setback plane and side yard plane requirements of LOC 50.06.060; LOC 50.07.040; and LOC 50.08.045.
v. The garage appearance and location standards of LOC 50.06.065; LOC 50.07.045 (2)(a.); and LOC 50.08.055.

d. The maximum height of structure permitted in the zone at the time of approval of the PD Overlay, and the methodology for determining the maximum height, shall be applied to structures within the PD Overlay.

This amendment conforms with the current interpretation of the effect of the PD Overlay, in terms of "locking in" the building height. This clarifies that the maximum height determination means not only the absolute height, but also the methodology that was applied at the time to PD Overlay approval.

Section 50.17.015 Authorization

1. a. In considering an application for a PD Overlay, the reviewing authority shall apply the ~~height, Floor Area Ratio (FAR), lot coverage, garage appearance and location, use, open space and density~~ requirements of the underlying zone ~~and, if applicable, the setback requirements of LOC 50.06.050 (5)~~.

This amendment authorizes the PD process to apply the underlying zone standards. In Subsection 2, exceptions to the zone standards may be granted.

If 50.06.050(5) is deleted, then this cross-reference to it should be deleted.

~~b. The FAR and lot coverage requirements may be applied with reference to the total area of the project as a whole and not on a lot by lot basis.~~

Lot coverage and FAR adjustments are addressed in subsection 2 below.

2. Adjustment to Zone Requirements.

a. Except for zone requirements listed in subsection (b) below, and the limitations in subsection (c), ~~the special setback requirements of LOC 50.06.050 (5),,,~~the reviewing authority may ~~grant~~ approve ~~exceptions~~ adjustments to the zone requirements if the applicant demonstrates that the proposed PD provides ~~the~~ the same or a better sense of privacy, appropriate scale, and open space ~~as~~ as a PD designed in compliance with the standard or standards to which an exception is sought. The reviewing authority shall consider the factors listed in subsection (d) below in determining whether to approve the adjustments.

b. No adjustments shall be approved for the following zone requirements:

~~The reviewing authority may modify the lot coverage allocated to the individual lots by the applicant if necessary for the resulting subdivision to meet the above criteria.~~

i. The special setback requirements of LOC 50.06.050 (5),
ii. height of building;
iii. use,
iv. open space, and
v. density requirements, and

These items are currently "off-limits" to any changes under the PD process. "Garage appearance and location" is currently off-limits; this amendment would allow the PD process to adjust the garage appearance and location.

c. Lot Coverage and FAR Limitations.

i. The aggregate lot coverage for all of the lots shall not exceed the maximum lot coverage based on the net buildable area of the project,

The addition of "net buildable" area of the project, and removal of the "as a whole" reference conforms with current practice of deducting the street area from the project area, in determining the lot coverage.

i. The total floor area of all lots, as modified by subsection (a), shall not exceed the aggregate of the floor areas as determined based upon the respective lot area and the floor area methodology required by the zone.

The current code provision is unclear how FAR is allocated "based upon the project as a whole" upon the project area, or the aggregate of the FA that would result upon applying the FAR to the lots within the project, and then a reallocation of the total FAR back to the lots. Staff has been applying the "FAR upon the lots" method, with the applicant reallocating the FA back. This amendment continues the historical practice, establishing the maximum FA as the cumulative total of the FA of all lots within the project. However, since the FAR is a zone limitation, the internal allocation would be required to meet the PD criteria, so that the FA is allocated based upon "appropriate scale", but with a maximum cap on the FA for the entire project.

d. In making ~~this~~ the determination required under subsection (a) above, the reviewing authority may consider:

i~~a~~. Whether the applicant has reserved or dedicated more than the minimum amount of open space required by the ~~Park and~~ Open Space Development Standard.

The name of the Park and Open Space Development Standard, LOC 50.46, has been shortened to "Open Space Development Standard".

ii~~b~~. Whether the requested exception allows the lots to be designed in a manner that provides better access to common open space areas from within and/or outside the PD, better protects views, allows better solar access, maintains or improves relationships between structures, maintains or improves privacy and/or improves pedestrian or bicycle access to surrounding neighborhoods.

~~c~~iii. Whether the requested exception will allow a more attractive streetscape through use of meandering streets, access through alleys or shared driveways, provision of median plantings, or other pedestrian amenities.

~~d~~iv. Whether the requested exception will enhance or better protect a significant natural feature on the site, such as a wetland, a tree or tree grove, or a stream corridor.

~~e~~v. Whether the requested exception will provide better linkage with adjacent neighborhoods, ~~parks and~~ open space areas, pathways, and natural features.

The definition of "open space" has been expanded to include park lands.

___ ~~f~~vi. Whether the requested exception will allow the development to be designed more compatibly with the topography and/or physical limitations of the site.

3. The following standards apply to PD ~~and cluster developments~~:

a. Lots which are located on the perimeter of a development located in a R-0, R-2, R-2.5, R-3, R-5, R-6, R-7.5, R-10 or R-15 zone, and which are adjacent to lots in an R-7.5, R-10 or R-15 city zone upon which are constructed single-family dwellings, may be not less than either 75% of the minimum lot area per unit of the adjacent zone, or the minimum lot size of the zone in which the development is located, whichever is less.

This amendment clarifies and conforms to an existing interpretation that the reference to adjacent zones R-7.5, R-10 and R-15 is to *city* zones. Thus, this section is not applicable if the adjoining lot is in the County because the reference to specific zones was to the city zones, even if the County has one similarly-named zone, i.e., R-10.

The 75% limitation should not require larger lot sizes for the subdivision than the minimum lot area requirements of the base zone. In other words, use of the PD should not force the subdivision lots to be larger than they would have to be under the base zone.

This amendment also adds the R-2.5 zone to the listed applicable zones.

b. Housing types located on the perimeter lots described in a. shall be single-family, zero lot line or duplex dwellings, except three attached dwelling units may be placed on three lots which abut at a common point with the middle lot being a corner lot.

c. In a PD ~~or cluster development~~ located in a R-0, R-2, R-3, R-5, or R-6 zone which abuts a R-7.5, R-10 or R-15 zone and which does not contain separate lots for the dwelling units, the building setbacks shall meet the requirements of the zone in which the development is located.

Cluster developments are something that occurs as a result of planned development (reduced lot size) or multi-family dwellings. The primary structure must be authorized under the zone; the *placement* of the structures on the site is addressed through the planned development process. There is no "stand-alone" cluster development without also being approved as a part of the planned development. Therefore, the definition of cluster development, and separate permitted uses of cluster development may be repealed.

4. If the proposed PD is part of an approved ODPS as described in LOC Article 50.71, requirements of the ODPS approval regarding arrangement of uses, ~~open space~~park land and resource conservation and provision of public services, will be considered when reviewing the considerations in subsection (1) for the PD.

5. Except as required by LOC 50.06.050 (5), the reviewing authority may grant exceptions to the minimum side yard setbacks of the underlying zone, without the necessity of meeting the requirements of LOC Article 50.68 (Variances) if the requirements of 50.17.015 are met, and:

a. Proposed lot sizes are less than the minimum size required by the underlying zone, or

b. Lesser setbacks are necessary to provide additional tree preservation or protection of abutting natural areas.

Article 50.20
FLAG LOTS

Section 50.20.025 Lot Configuration Requirements.

1. Determination of Front Yard: …….

2. Lot Width: Lot width shall be measured by a line connecting two points on opposite side yard property lines, that will result in a line parallel to the front yard.

~~3. Lot Depth: The lot depth shall be measured at the mid-point of the front and rear property lines of the "flag".~~

Minimum "lot depth" requirements are proposed to be eliminated. In many cases, compliance with the current lot depth requirement is an exercise in creativity, creating front and rear lot lines of varying width and offset from each other so that the "slant distance" between the two midpoints is sufficiently separate; however such creativity, although meeting the code requirement, accomplishes nothing in terms of an actual depth requirement. Further, there are instances in which there is NO lot depth because the lot does not have a rear lot line, e.g., a reverse triangle lot, where there is only a front and side. Staff believes that the requirement for "lot depth" has been an academic exercise, with no real effect upon the compatibility of the lot configuration to the neighborhood, or to the neighbors. Preserving the lot width requirement will retain the minimum lot width, and likely width of the front façade of the structure, to preserve the streetscape.

~~4~~3. Lot size: Area of access easement or flagpole shall be deducted from the gross acreage of the flag lot. The "flag" portion of the lot shall be equal to or exceed the square footage of the underlying zone.

Section 50.20.035 Screening, Buffering and Landscape Installation

3. The rear and side yards of the flag lot ~~where the new development occurs~~ shall be screened from ~~adjacent~~ abutting ~~property~~ lots outside of the partition site with a 6 foot tall fence, except where a 4 foot fence is required by LOC 45.15.020 (1) of the Building Code, and except where the abutting ~~property~~ owner agrees in writing that a fence is not necessary along the common property line. In addition, a landscaped buffer within the rear yard setback a minimum of 6 feet in width shall be created along the rear property line and planted with a deciduous or evergreen hedge, a minimum 4 feet in height at planting which shall grow to a height of 6 feet within two years and shall be maintained at a minimum of that height, except where the abutting ~~property~~ owner agrees in writing that a landscaped buffer is not necessary. The above requirements pertaining to the "rear yard" are not applicable where the rear yard abuts Oswego Lake or railroad rights-of-way.

This amendment corrects the erroneous use of "adjacent" when "abutting" owner was intended. It also eliminates the necessity for a fence along the rear lot line where the "abutting property" consists of a railroad right of way. These amendments conform to existing Planning Division interpretation.

4. Tree removal mitigation: A minimum of one evergreen or deciduous tree, of a species which will attain a minimum of 30 feet in height, shall be planted at a 1:1 ratio where practicable in order to mitigate the removal of existing trees necessary for site development. Deciduous trees at planting shall be a minimum of 2 inch caliper and evergreen trees shall be a minimum of 8 feet tall.

Recently the question arose whether "site development" was applied only for development at the time of lot creation, or at any later time, when removal of trees was necessary for development on the flag lot. Deputy City Attorney Evan Boone relied on context and rules of statutory construction to answer the question. (He concluded that "site development" is only at the time of lot creation.") It would be preferable to make it clear, one way or the other, for both staff and the public. On the one hand, staff suggests that tree mitigation should be ongoing, given the nature of flag lots relative to the surrounding regular lots. On the other hand, an argument can be made that flag lots are not so unique as compared to regular lots that the requirement of mitigation should be so different. Additionally, staff notes that there will be challenges making both the public and staff aware of these special tree removal requirements for flag lots, as these requirements are in the Community Development Code, rather than the Tree Code.

Additionally, if flag lots are to retain the trees on the site to screen and mitigate the flag lot, staff suggests that tree removal for any reason (Class 1, Class 2, dead, hazardous, emergency, or verification tree removal) should require mitigation, given the screening and buffering element required for approval of flag lots.

Option 1: - does not include post-lot creation/ site development only:

4. Tree removal mitigation: A minimum of one evergreen or deciduous tree, of a species which will attain a minimum of 30 feet in height, shall be planted at a 1:1 ratio where practicable in order to mitigate the removal of existing trees necessary for site development approved with the development permit approving the flag lot. Deciduous trees at planting shall be a minimum of 2 inch caliper and evergreen trees shall be a minimum of 8 feet tall.

Option 2: Does include post-lot creation /site development only

4. Tree removal mitigation: A minimum of one evergreen or deciduous tree, ~~of a species which will attain a minimum of 30 feet in height,~~ shall be planted at a 1:1 ratio where practicable in order to mitigate the removal of existing trees necessary for site development, whether occurring as a part of the development permit creating the flag lot, or for site development occurring thereafter. At the first time tree removal is approved for site development, the mitigation tree shall include a species which will attain a minimum of 30 feet in height Deciduous trees at planting shall be a minimum of 2 inch caliper and evergreen trees shall be a minimum of 8 feet tall.

Option 3: Does include post-lot creation / removal of any tree

4. Tree removal mitigation: A minimum of one evergreen or deciduous tree, ~~of a species which will attain a minimum of 30 feet in height,~~ shall be planted at a 1:1 ratio where practicable in order to mitigate the removal of existing trees ~~necessary for site development~~, whether occurring as a part of the development permit creating the flag lot, or for any reason thereafter permitted by LOC 55.02.042. At the first time tree removal is approved for the flag lot, the mitigation tree shall include a species which will attain a minimum of 30 feet in height. Deciduous trees at planting shall be a minimum of 2 inch caliper and evergreen trees shall be a minimum of 8 feet tall.

Article 50.22
EXCEPTIONS TO SITE DEVELOPMENT STANDARDS AND SPECIAL DETERMINATIONS

~~**Section 50.22.020 One Year Exception to Height / Setback / Lot Coverage Requirements for New Subdivision Lots.**~~

~~A residential building permit applied for within one year of the date of recordation of the final plat of a subdivision shall be reviewed pursuant to the setbacks, height and lot coverage standards in effect at the time of the application for the subdivision.~~

Currently, subdivision lots are not subject to changes in the Code for one year related to setbacks, height, and lot coverage standards. This has the following effects: it is only applicable to subdivision lots, as contrasted with lots created by partitions. Further, the scope of "frozen" regulations is limited to setbacks, heights and lot coverage, but would be subject to other regulations adopted following the subdivision approval: FAR, side yard plane requirements, garage appearance and location, accessory structures, secondary dwellings, etc. This is confusing for both the public and staff.

This section was originally adopted in 1992 (and, contrary to the staff's commentary in its 2002 commentary for the Code consolidation, it was not in response to ORS 92.040(2) and (3), and relates only to the buildability of the subdivision lots and not the lot's base zone standards.) It was adopted as a part of the "New Construction / Alteration" code amendments that had differing setbacks and building heights depending on whether the construction was for new construction or alteration. The concern then was that,

> "because application for building permits does not occur until after the partitioning process a person could design their new parcels based upon current criteria, but be prohibited from obtaining building permits because the standards had changed in the interim. … Staff suggests a grandfather clause which would provide that if a building permit is applied for within one year of the date of final approval of a subdivision or minor partition, the building permit would be processed pursuant to the dimensional standards in effect at the time of application for the partition or subdivision."
>
> CAO Staff memo, page 2, 10/22/91 (for ZC2-91/DA2-91).

The vast majority of subdivisions are processed as a Planned Development, which freezes in the setbacks, height, garage appearance and location, use, open space and density requirements of the underlying zone, and establishes the FAR and lot coverage. This "freeze" is for the duration of the PD overlay (currently, that means essentially forever).

The decoupling of this section from partitions occurred in 2002, and there have been no instances in which persons are "prohibited from obtaining building permits because the standards have changed in the interim." The existence of Class 1 and 2 variances, and Residential Infill Design Review, alleviate the possibility that a building permit would be prohibited, although there would be the necessity to apply for the additional permit. Staff recommends that this section be repealed. If it is a Planned Development, this section is not necessary.

Alternatively, if the Planning Commission believes this section should be retained, it should be re-applied to partitions and all dimensional / locational standards should be included within its scope, to avoid the anomaly of applying some but not all dimensional / locational standards.

Section 50.22.030 Oswego Lake Setback

~~Except for:~~

~~1. a boathouse~~

~~2. retaining walls (seawalls) permitted pursuant to LOC 45.15,~~

~~3. within the Flood Management Area defined by LOC 50.44.005(2), water dependent uses and lake-related infrastructure permitted as development pursuant to LOC 50.44.030(1)(e) and (g), and~~

~~4. any structure located below finished grade,~~

1. ~~a~~Except as permitted under subsection (2), a structure shall be setback a minimum of 25 feet from the property line of the parcels which constitute Oswego Lake, its bays and canals in all zones except in the WR zone, as shown on Appendix 50.22-A.

2. Uses[EPB4] and Structures Permitted Within Oswego Lake Setbacks. The following uses and structures are permitted within the Oswego Lake Setback:

Uses and Structures	**Maximum Height**	**Height Limitations**	**Other Standards**
Barbeque, fireplace, lights; steps, docks, deck; and spa / Jacuzzi	6 feet	• Height exception under LOC 50.22.015 is NOT applicable. • Chimney stack for barbeques and fireplaces shall not exceed 8 feet in height; the width of the chimney stack above 6 feet in height shall not exceed 3 feet.	
Outdoor shower	8 feet	Height exception under LOC 50.22.015 is NOT applicable.	
Boat house	18 feet, measured from Oswego Lake Surface Elevation.	Height exception under LOC 50.22.015 is NOT applicable.	• Wall Height: 10 feet, measured from Oswego Lake Surface Elevation, to eave • Maximum 800 square feet footprint.
Lake-related infrastructure structures and uses.	none		None
Fences and Retaining walls (including seawalls)	See LOC 45.15.		Only as permitted by LOC 45.15

~~The exception in LOC 50.14.005(5) for siting accessory structures within setbacks shall not apply to this Oswego Lake setback.~~

This amendment allows certain accessory structures and water dependent uses to occur within the Oswego Lake Setback. It is proposed following discussions with Oswego Lake Corporation, in order to allow accessory uses arising in relation to the "up-lake" abutting residential lot on the "lake parcel" to the same degree as if the residential lot proceeded below the water line.

Boathouse" is a "water-dependent uses":

> Water Dependent Use. A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water. Water dependent uses include, but are not limited to, **boat houses**, docks, decks, marinas, piers, boat lifts, or similar structures. A cabana is not a water dependent use.

Fences are added to the list of structures that are permitted in the Oswego Lake setback There is confusion since the existing code section specifically allows retaining walls per LOC 45.15, and fences are considered a structure.

Section 50.22.035 Special Street Setback

1. Purpose. To assure an adequate front yard setback is available in the event of possible ~~preserve an obstruction-free area along public rights-of-way in anticipation of~~ future street improvements, such as additional lanes, pedestrian and bicycle facilities, transit facilities, drainage management improvements, lighting, and street landscaping.

The purpose of the special street setback is not to establish an obstruction-free area for future acquisition, but is to assure that *if* a future street widening project occurs, there will be adequate front yard setback remaining following the widening project, for the same reasons that a front yard setback is established.

2. Establishment of Special Street Setback Reference Line. The City Engineer establishes, pursuant to LOC 42.03.135, the centerline from which the Special Street Setback Reference Line is measured pursuant to LOC 42.03.135. ~~A "special street setback reference line" is hereby established for the streets identified in subsection (6) below. On these streets, required yards shall be measured from the special street setback reference line.~~

3. Method of Measurement. The Special Street Setback shall be measured from the Special Street Setback Reference Line (as established pursuant to LOC 42.03.135), ~~reference line shall be established by measuring~~ the prescribed Special Setback distance in subsection 6~~from the center of the right-of-way or as described in the special street setback requirement~~.

This section for the *procedure* for establishing the Special Street Setback Reference Line is proposed to be moved from the Community Development Code to the general Code relating to streets, LOC 42.03.135 (new section). The establishment of the reference line within the public right-of-way is an engineering function, not a land use regulation relating to the use of property. The setback *from* the reference line is a land use regulation.

4. Priority of Other Plans. Special street setbacks are minimums. If a greater amount of additional right-of-way is warranted by improvements identified in a traffic impact study, corridor study, or transportation system plan, then the greater amount shall prevail.

5. The special street setbacks set forth in subsection (6) shall not be reduced.
6. Special Street Setback List:

Affected Streets	From	To	Special Setback
Bangy Rd.	South of Alyssa Terrace		30 feet
Bergis Rd.	Cornell St.	Stafford Rd.	30 feet
Bergis Rd.	Cornell St.	Skylands Dr.	25 feet
Boones Ferry Road	Mercantile Dr.	West Sunset Dr.	50 feet~~, but will be superceded by the City Council's adoption of a corridor study.~~
Bonita Rd.			30 feet
Bryant Rd.	Boones Ferry Rd.	Lake View Blvd.	40 feet
Bryant Rd.	Lake View Blvd.	Childs Rd.	30 feet
Burma Rd.			25 feet
"C" Ave	State St. alley	Country Club Rd.	30 feet
~~Carman Drive~~		~~North and east of Kruse Way~~	~~30 feet~~
Carman Drive		South and west of KruseWay	40 feet
Cornell St.	Larch St.	Bergis Rd.	30 feet
Egan Way	East/west leg only		20 feet
Fielding Rd.			20 feet
Firwood Road			30 feet between Boones Ferry Rd. and Waluga Dr.; 20 feet west of Waluga Dr.
Gassner Ln.			20 feet
Inverurie Rd.	North of Washington Ct.		20 feet
Knaus Rd. ~~from~~	~~Country Club Rd.~~	~~North City Limits~~	30 feet
Lake Grove Ave			20 feet
Lake View Blvd.	Bryant Rd.	Iron Mt. Blvd.	25 feet, except between South Shore Boulevard and Summit Court.
Lamont Way			20 feet
Lanewood St.		Through south leg of Douglas Circle	20 feet
Laurel St.	Dyer St.	Hallinan St.	30 feet
Lower Dr.			~~20~~ 25 feet
McVey Avenue	State Street	South Shore Blvd.	40 feet
Madrona St	~~Boones Ferry~~	~~Bryant Rd. (south from railroad r/w)~~	~~50~~ 25 feet
North Shore Rd.	Abutting the railroad right-of-way		30 feet measured from the south line of the railroad right-of-way.
Oakridge Rd.	Quarry Rd.	Bonaire Ave.	25 feet
Oakridge Rd.	Quarry Rd.	Boones Ferry Rd.	30 feet
Overlook Dr.			30 feet

Pilkington Road	South of Rosewood St		Special street setback line shall be measured 30 feet from the east line of Rosewood Plat.
Quarry Rd.	Boones Ferry Rd.	Galewood St. and extension to Carman Dr.	30 feet
Reese Rd.	Boones Ferry Rd.	Upper Drive	30 feet
Rosewood St.	Pilkington Rd.	Tualatin St.	25 feet
South Shore Blvd.			40 feet
Stafford Rd	~~South Shore Blvd~~	~~south City limits~~	40 feet
State Street			50 feet
Summit Dr.	Lake View Blvd.	Ridgewood Rd	20 feet
Sunset Dr.			20 feet
Tualatin St.			20 feet
Twin Fir Rd.	Boones Ferry Rd.	Upper Dr.	30 feet
Upper Dr.	~~Iron Mt. Blvd.~~	~~City limits~~	25 feet
Waluga Dr.	South of ~~Firwood~~ Oakridge Rd	North of Madronna St.	20 feet
West Sunset Dr.	West of West Lake Grove Design District Boundary		20 feet

~~The special street setbacks set forth above shall not be reduced.~~

This is stricken here because it is duplicated in subsection (5) above.

Changes to specific streets are explained below:

- Boones Ferry Road: This section will be amended if the street right-of-way is adjusted by a future ordinance (Lake Grove Village Center Plan).
- Carman Drive: All additional ROW has been acquired.
- Knaus Road – There is no need for a description of the terminus when the entire road is intended.
- Lower Drive - This street is bounded on the northside by a railroad---additional ROW must therefore come from south side. The proposed 25 foot special street setback is consistent with what we have been in fact obtaining from partitions along this roadway for the last six years.
- Madrona – Two errors: (1) Erroneous description--street does not intersect Bryant; and (2) 50 ft. was the intended whole right of way
- Stafford - Redundant description---it is the whole road as far as it goes
- Upper Drive - Redundant description---it is the whole road as far as it goes
- Waluga Drive – Not all of Waluga needs a special street setback -- just the part of Waluga between Oakridge and Madronna. No through, uncurbed streets should have less than 40 feet of right of way plus pathway easements where needed. North of Oakridge Rd. the Waluga Drive right of way is 40 feet wide, and the City has already installed the bike lanes/shoulder pathways called for in the TSP.
- West Sunset Dr.: The there was an inadvertent dropping of "west" in the name of the district; it should read "West of the West Lake Grove Design District."

Section 50.22.045 General Exceptions ~~for Building Projections and Decks~~ to Setbacks

The title is proposed to be changed because the section is expanding scope to include items other than building projections and decks.

1. Projections from Buildings. The following projections may project not more than the number of feet stated in subsection (a) or (b) below into a yard setback required by the zone or as adjusted by LOC 50.22.010 ~~required yard~~, but not closer than 10 feet to the front setback line:

This amendment clarifies that the projections can go into the zone-established yard or as that yard setback is adjusted by LOC 50.22.010 (front setback averaging). Projections into a yard based on variance or RID are under the variance / RID dimension request.

a. 2 foot projections: Cornices, eaves, canopies, bay windows located on the ground floor (but not more than 6 ft. wide, with a maximum of two bay windows per side), flower boxes,. sunshades, gutters, chimneys, flues, belt courses, leaders, sills, pilasters, lintels, ornamental features, and other similar architectural features.

This amendment allows bay windows (with dimensional standards) to project into a required yard, as they were previously addressed through LOC 50.07.025. However, LOC 50.07.025 was only applicable to the R-6 zone. Staff believes that the exception should exist in all zones if it is to exist for R-6. This amendment also establishes the parameters of width and how many bay windows may project into the yard setback.

b. 1 foot projections: decorative metal balconies (but not more than 6 ft. in length and one foot in depth

This amendment allows decorative metal balconies to project 1 foot into the yard. The smaller depth is to assure that the balcony is a decorative feature, rather than useable.

~~may project not more than 2 feet into a yard setback required by the zone or as adjusted by LOC 50.22.010 required yard , but not closer than 10 feet to the front setback line or into required open space as established by coverage standards~~.

2. Patios and decks on or above grade, but no more than 30 inches above grade, may project into a required yard, but may not be closer than three feet to any property line. Patios and decks above 30" shall be subject to the zone setback. Such intrusion into the required yard are to be undertaken solely at the risk and expense of the owner. Any structure which is placed in a required yard, and is required to be moved for any reason, shall be moved without expense to the City and the person who bears such cost shall have no recourse against the City to recover such cost.

3. Access Walkways and Pathways, Driveway Bridges, Trams and Staircase.

a. Walkways and pathways, regardless whether on grade or elevated, that provide principal access from the adjacent public right-of-way to a dwelling or as a public entrance(s) to a commercial, industrial, or public facility building are permitted in the required yard, so long as the elevation of the walkway or pathway is at or below the elevation of the driveway or parking area for the dwelling or building. If the walkway or pathway is elevated, it shall be the most direct route practicable.

b. Bridges that form the driveway from the abutting street to the garage are permitted in the required yard, provided the driveway bridge is used for the most direct route practicable.

This amendment allows elevated bridges that are necessary to span across a slope, from the street to the garage, to be allowed within setbacks. To the extent the bridge is above 30" in grade, it would be included in lot coverage calculation.

4. Trams and staircases that provide access to Oswego Lake, and its bays and canals, and to the Willamette River are exempt from the Oswego Lake Setback, if applicable, and rear yard setback;

This exception allows trams and staircases to access Oswego Lake and Willamette River. This would result in a number of non-conforming trams and staircases being legalized.

5. Equipment for public service, e.g., utility meters, transformers, telephone switching equipment.

This amendment reflects current practice of exempting public utility equipment from setback requirements.

Article 50.30
PECIAL REQUIREMENTS FOR TYPE OF FACILITY

Section 50.30.005 Home Occupation .

A home occupation may be conducted where allowed ~~by other provisions of this Code if the following conditions are continuously complied with:~~

~~1. The use does not alter the residential character of the neighborhood nor infringe upon the right of residents in the vicinity to the peaceful enjoyment of the neighborhood.~~

~~2. A current and valid business license is maintained.~~

~~3. No employees other than family members who reside at the dwelling.~~

~~4. No outside storage of goods or materials other than vegetation.~~

~~5. No more than 25% of the dwelling is devoted to non-residential use~~.

as a use permitted in the zone, subject to continuous compliance with the following standards:

The purpose of these amendments to the Home Occupation standards is to expand the types of occupations that would be permissible and give greater clarity to applicants, neighbors, and staff what types of occupations are permitted and what types are not.

1. The use would not, and once commenced does not, alter the residential character of the neighborhood. Effects that would alter the residential character of the neighborhood include, but are not limited to:

This amendment confirms that, when looking at a home occupation application, the reasonably expected effects of the home occupation may be looked at to determine if the home occupation would not alter the residential neighborhood character.

a. Noise generated by the home occupation regularly heard off-premises: Examples: auto repair, dog sitting, any noise that violates LOC 34.10.537 or 34.10.539.

b. The Home Occupation use generates more than 10 vehicle trips per day (5 round trips per day).

One of the major issues in home occupations is the degree to which home occupations should be limited because of the potential (versus actual) off-premises effects (noise / parking) of the occupation.

2. Permitted Outside Activities related to the Home Occupation. Only the following uses relating to the home occupation may occur outside of a dwelling or accessory structure:

One of the major issues in home occupations is the degree to which home occupations should be limited because of the potential (versus actual) off-premises effects. This standard would allow incidental external use, but only so long as it would not conflict with the first criteria – altering the residential nature of the neighborhood.

a. Incidental Use: Incidental outside use that does not alter the residential nature of the premises is permissible, i.e., outside photo location for photographer.

Currently all exterior use is prohibited. This amendment would allow incidental exterior use. The "not alter residential character" limitation would continue to apply.

b. Storage of Materials or Finished Products:
i. Raising vegetation, whether in ground or in pots may be located anywhere on the site.
ii. Arts and Crafts materials and finished products shall not be located in front of any dwelling or in the front yard.
iii. Temporary Storage other than Arts and Crafts materials or finished Products) -- Temporarily stored materials or finished product other than Arts and Crafts, and including stored or harvested vegetation (not in ground or in pots), shall not be located in front of any dwelling or in the front yard; such materials or finished products stored elsewhere shall be well-screened from public rights-of-way, streets, and abutting dwellings and accessory structures.

Currently all exterior use is prohibited. This amendment would allow specific exterior use, subject to the limitations stated.

3. Maximum Floor Area of Home Occupation: The maximum floor area that is exclusively devoted to home occupation use shall not exceed 600 square feet floor area.

Currently the percentage limitation on use of the dwelling for home occupation uses has also been construed as a prohibition of use of accessory structures. This resulted in home occupation activities prohibited in a detached garage, but permitted in an attached garage. This amendment would remove the primary dwelling / accessory structure distinction and establish a maximum square footage limitation, regardless of whether in the dwelling or in an accessory structure.

4. Non-Resident Persons Employed or Engaged in Home Occupation: No employees or other persons engaged in the home occupation not residing on the site shall use the premises for business purposes.

This amendment retains the "no non-resident employees" restriction but clarifies that it also include other "employment relations" – partners, shareholders, LLC members, independent contractors, interns, etc. This conforms with existing interpretation.

5. Business License. A current and valid business license is maintained, unless exempt under LOC 20.02.025.

6. Prohibited Businesses; Exceptions.

(a) Notwithstanding any other provision of this section, and except as permitted by subsection (b) below, all aspects of the following commercial uses are prohibited as home occupations:

i. Auto Repair;
ii. Landscaping Service;
iii. Construction;
iv. Large Appliance Repair, e.g., refrigerator, washers / dryers, stove/oven;
v. Furniture Upholstery;
vi. Pet Care, Daily (including "Doggy Day Care"); and
vii. Business requires a state or federal permit for handling or storage of hazardous materials.

There are certain types of commercial uses which have been found not to qualify as home occupations. This listing eliminates the need to make a case-by-case application analysis of these types of commercial uses and whether they would affect the residential character of the neighborhood It is also possible that some of these uses could be listed as conditional uses rather than prohibited uses.

(b). Exceptions. The following portions of a commercial use prohibited as a home occupation may, nevertheless, be permitted as a home occupation:

i. Office and/or bookkeeping portion of a prohibited commercial use prohibited above;
ii. The raising and storage of vegetation, for a landscape service business.

In such event, the permitted home occupation portion of the commercial use shall be designated on the business license with the limitation noted. Example: "office/bookkeeping only [Auto Repair or Landscaping Service or Construction.] and/or "vegetation only [Landscape Service]".

This allows the office/bookkeeping component portion of a prohibited business and the vegetation raising portion of a landscaping service to place that part of the business as a home occupation.

Section 50.30.010 Specific Standards for Secondary Dwelling Unit

See proposed definition of Secondary Dwelling Unit:

Dwelling Unit, Secondary: A dwelling unit that complies with LOC 50.30.010 and either is:

- A detached accessory structure from the primary dwelling and contains all of the elements of a dwelling unit within the accessory structure, or
- A part of the primary structure but there is a physical separation by means of a wall or other permanent barrier of the necessary elements of two dwelling units, on each side of the separation, so that the usual and customary use is as two dwelling units, rather than as a single, interconnected housekeeping unit.

A secondary dwelling unit may be allowed in conjunction with a single-family dwelling by conversion of existing space, by means of an addition, or as an accessory structure on the same lot with an existing dwelling, when the following conditions are met:

1. The site is large enough to allow one off-street parking space for the secondary unit in addition to the required parking for the primary dwelling.
2. Public services are to serve both dwelling units.
3. The maximum size of the secondary dwelling unit~~number of occupants is limited to no more than two persons in the secondary unit~~ is limited to 800 sq. feet.
4. ~~The unit does not exceed one bedroom and an area of 800 square feet, or a total FAR of 0.4:1 for all buildings.~~ No more than one additional unit is allowed.

It is difficult to ascertain the number of persons residing in any type of residence. Staff proposes elimination of the number of persons / bedrooms / square footage per person standards and instead just address the size of the secondary dwelling unit.

FAR is addressed through Subsection 5, as that relates to the zone requirements.

5. The unit is in conformance with the site development requirements of the underlying zone, including any adjustments and additions listed in the base zone, is located within a lawful non-conforming structure, or the zone requirements have been varied or excepted pursuant to LOC 50.68 or LOC 50.72 (provided however that any variance for the structure was not obtained solely to locate a secondary dwelling unit on the site; the inability to site a secondary dwelling unit on a parcel is not an unnecessary hardship). ~~the site development requirements of the underlying zone and LOC Chapter 45~~.

The existing interpretation is that the requirement for compliance with the underlying zone requirements includes that the structure may have obtained a variance to the underlying zone standards, as permitted by the Code. However, if the structure is non-conforming, staff has interpreted the "compliance with the underlying zone standards" as meaning that the secondary dwelling unit could not be located in that portion of the non-conforming structure that is in the area of non-conformity; in other words, the secondary dwelling unit has to be located in that portion of the structure that meets the underlying zone requirements. Example: portion of primary dwelling crosses setback line. Owner converts part of primary dwelling to a secondary dwelling unit. The secondary dwelling unit cannot be located in the setback area, as it has to be located behind the setback line. Planning staff believes that this is a "form over substance" requirement -- it makes no difference what portion of the residence the secondary dwelling unit is located in. This amendment would permit a secondary dwelling unit to be located in any portion of a dwelling unit that is either non-conforming or has obtained a variance; this amendment also states that the desire to expand is not an "unnecessary hardship" to justify the expansion of a dwelling unit to accommodate a secondary dwelling unit.

The reference to LOC Chapter 45 Building Code is not necessary, as every building must comply with the Building Code.

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~~6. The following minimum area standards shall be met:~~
~~1 person - 250 square feet.~~
~~2 persons - 500 square feet.~~

It is difficult to ascertain the number of persons residing in any type of residence. Staff proposes elimination of the number of persons / bedrooms / square footage per person standards and instead just address the size of the secondary dwelling unit.

~~7~~6. One unit shall be occupied by the property owner. The owner shall be required to record a declaration of restrictive use in the appropriate county clerk deed records prior to issuance of a building permit for the secondary dwelling unit on the lot. The declaration shall state that use of the parcel is subject to compliance with the City of Lake Oswego's secondary dwelling unit requirements (LOC 50.30.010), including the requirement that one of the dwellings on the lot be occupied by the property owner to permit usage of a secondary dwelling unit on the lot.

~~8~~7. The reviewing authority may impose conditions regarding height modifications, landscaping, buffering and orientation of the secondary unit to protect privacy of the neighbors.

Article 50.40
Drainage Standard for ~~Ministerial and~~ Minor Development Other Than Partitions, Subdivisions, And Certain Structures ~~.~~

Section 50.40.005 Applicability.

This Article shall be applicable to all ~~ministerial and~~ minor developments within the City, other than partitions, subdivisions, and construction or alteration of structures as described in LOC 50.79.020 (2)(f).

This amendment eliminates the drainage review from *ministerial* review, such as building permit reviews. Under the State Building Code and LOC 45, when a new structure is built, water flow from the roof must be collected into gutters, and then discharged to an "approved location" (drywell, storm water system, natural drainage course, etc.) The question arose whether review of site alteration work, whether as part of a building permit or as part of a homeowner's re-landscaping, should continue to be required but located in another LOC Chapter, such as the Building Chapter, LOC Chapter 45. Currently, although there is an "adverse impact" standard for ministerial review in practice, the City does not have the expertise in the Building Division or the Engineering Department to determine the hydrological effect of ground alterations, whether for a single residence or for exempt development (landscaping changes), and to make site inspections to assure the drainage management measures are being installed as shown. In the vast majority of building permits, drainage (and the absence of a clear standard and lack of inspection) has not been an issue that has involved the City. (This issue has come to light due to the La Mesa / Plummer alteration to the rear yard as part of a building permit application.

Staff extensively discussed the purpose of the drainage standard, and its application to single building permits (as opposed to minor / major developments).

- The requirement of an applicant to provide a hydrology report that the alteration will not have any adverse effect on adjacent residences was rejected as being unnecessarily costly for the vast majority of non-structural alterations. In addition, there was the challenge as to how the report should be reviewed, and to what extent the neighbors should be able to critique the report *before* the building permit is issued.
- Why would a site drainage review be required for non-structural ground alterations when associated with a building permit, whereas the same alteration could occur post-construction without the need for a permit or drainage review.

- Non-structural alterations typically do not increase the drainage risk when they do not affect the sheet flow. For example, sheet flow from a driveway merely runs off the side of the road and is absorbed into the ground.
- Currently drainage disputes between homeowners are handled by resort to the Oregon law, including case law, relating to drainage. Adverse drainage impacts are really a type of nuisance between property owners. Incorporating a drainage standard as a type of nuisance in LOC 34.08 was considered, but rejected as not adding to the common law determination as to when a nuisance occurred. It might add another count in the complaint – violation of code, as well as violation of the "common law" obligation to control adverse drainage - but this would not have an appreciable effect on the injured owner's claims.
- Staff considered whether the drainage standard was in part to address the impacts of impervious surfaces, and whether the Code should really control the amount of impervious surface. Several existing zones have impervious surface requirements. Imposing impervious surface requirements as a means of addressing non-structural alteration causes of drainage impacts was thought to be an imprecise tool, and would generate considerable costs and limitation on development without much effect on the drainage concern.

Ultimately, staff came to the conclusion that as to ministerial developments the drainage standard is not being applied, that there are negligible benefits to addressing non-structural alterations of the site above and beyond the private remedies available to property owners, and that if the City wished to undertake drainage review for ministerial permits, this would have a significant unnecessary cost to homeowners (in terms of hydrology reports), and City (in terms of notice and review of homeowners reports).

Additionally, this amendment clarifies that this drainage standard is not applied to partitions, subdivisions, and structures described in LOC 50.79.020 (2)(f); LOC Article 50.41 is applied to those land developments.

Section 50.40.010 Standards for Approval.

Drainage Pattern Alteration. Development shall be conducted in such a manner that alterations of drainage patterns (streams, ditches, swales, and surface runoff) do not adversely affect:

1. ~~other~~ Other property, or
2. RC Districts on adjacent property, or
3. RP Districts and associated buffer on adjacent property.

For purposes of this section, "adversely affect" would mean that damage would occur to abutting properties if a 10-year design storm [NOAA's Fanno Creek Study Area design storm; see City Engineer's Surface Water Management Design Manual] occurred on the site.

This amendment is to require that the drainage not harm natural resources (tree groves, stream corridors, and wetlands). Traditionally, this standard means that the drainage shall not add water or changes direction, which could result in erosion or flooding to other properties. This amendment would require development protect against *unwanted* flooding and water drainage to or on RC or RP Districts, or RP District Buffer, but not interfere with the course and flow of water *into* the natural resource.

This amendment also establishes the design storm under which "adversely affect" would be measured.

Article 50.41
Drainage Standard for Major Developments, Partitions, Subdivisions, and Certain Structures

Section 50.41.005 Applicability.

This Article applies to:

1. ~~all major~~ Major developments~~.~~;
2. Partitions involving the creation of a public or private street;
3. Subdivisions; and
4. Construction or alteration of structures as described in LOC 50.79.020 (2)(f).

This amendment implements the designation of partitions, subdivisions, and construction or alteration of structures, as provided in LOC 50.79.025(2).

Section 50.41.020 Standards for Approval.

1. All drainage management measures, whether located on private or public property, shall be accessible at all times for City inspection. When these measures have been accepted by the City for maintenance, access easements shall be provided at such a width to allow access by maintenance and inspection equipment.
2. Storm Water Runoff Quality. All drainage systems shall include engineering design features to minimize pollutants such as oil, suspended solids, and other objectionable material in storm water runoff.
3. Drainage Pattern Alteration. Development shall be conducted in such a manner that alterations of drainage patterns (streams, ditches, swales, and surface runoff) do not adversely affect:
   1. Other property, or
   2. RC Districts on adjacent property, or
   3. RP Districts and associated buffer on adjacent property.

This amendment is to require that the drainage not harm natural resources (tree groves, stream corridors, and wetlands). Traditionally, this standard means that the drainage shall not add water or change direction, which could result in erosion or flooding to other properties. This amendment would require development protect against *unwanted* flooding and water drainage to or on RC or RP Districts, or RP District Buffer, but not interfere with the course and flow of water *into* the natural resource.

4. Storm Water Detention. Sufficient storm water detention shall be provided to maintain runoff rates at their natural undeveloped levels for all anticipated intensities and durations of rainfall and provide necessary detention to accomplish this requirement.
5. Required Storm Water Management Measures. The applicant shall provide sufficient storm water management measures to meet the above storm water runoff requirements. The applicant shall provide designs of these measures taking into account existing drainage patterns, soil properties (such as erodibility and permeability) and site topography.

Article 50.42
Weak Foundation Soils

Section 50.42.005 Applicability.

This Article applies in areas identified as "Potential Weak Foundation Soils to all:

a. Minor and major development which will involve proposed structures, or

b. Ministerial construction of structures where the requirements of this Article have not been previously applied to the development site. ~~located in areas identified as "Potential Weak Foundation Soils.~~

This amendment conforms to current practice to require soils analysis when the site is initially developed, so that a soils report is prepared and then, later, when subsequent ministerial building permit is applied for, the building department would require the structure to be built in accordance with the soils report. If there is no soils report for the area on file, the Building Official has authority under the Building Code to require a soils report.

If the site already has a soils report, then the Building Official will require compliance with the soils report requirements under the Building Code and therefore this Development Standard need not be separately applied.

Section 50.42.010 Standards for Approval.

The actual presence of weak foundation soil is not a cause for denying development, but may cause ~~density to be reduced,~~ structural modifications to be required, or structures to be relocated.

This amendment clarifies that this standard is applied once the soils have been determined to present an actual problem for construction. Further, density is not reduced – the structural solutions address the problems in construction.

Section 50.42.015 Standards for Construction.

~~None. (Reserved.)~~

~~3~~1. If soils characteristics are determined by the applicant's registered professional soils engineer or engineering geologist to be adequate for the proposed use and structure(s), no further consideration of compensating design shall be necessary.

~~4~~2. If soils characteristics are determined by the applicant's registered professional soils engineer or engineering geologist not to be adequate for the proposed use or structure(s) without compensating for the effect of the soils, ~~The~~ the engineering report shall include conclusions and recommendations for design criteria for corrective measures, which are appropriate to the soils and types of proposed use or structure(s).

~~5~~3. If the site has been previously evaluated under this Standard, the construction of a structure shall be deemed to comply with this standard if either:

a. The soils engineer or engineering geologist concluded that the soil is adequate for the proposed use and structure(s); or

b. The building plans for the structure comply with the corrective measures recommended under subsection (3) above. The application materials shall include description of the design or engineering features which will compensate for the soils in accordance with the recommendations of the engineering report. The proposed design shall be certified by a registered professional engineer.

The construction standards are moved up from "Procedures" section below. The unmarked text shows the text from the existing Code section, LOC 50.42.025. The redlining shows the

proposed changes, to address when the soils report is needed, and to allow construction without obtaining a new soils report if one already exists and the construction conforms to the soils report recommendations.

Section 50.42.020 Standards for Maintenance.

None. (Reserved.)

Section 50.42.025 Procedures.

~~1. Confirmation of Weak Foundation Soil. The applicant shall be responsible for confirming whether or not the soils in the proposed development site are actually Weak Foundation Soils.~~

~~2~~1. If a development is located in an area of ~~potential~~ Potential ~~weak~~ Weak ~~foundation~~ Foundation ~~soils~~Soils, the applicant shall provide the City Manager a report prepared by a registered professional soils engineer or engineering geologist. This report shall describe the nature, distribution, and strength of the soils, including findings regarding the adequacy of the soils to support the ~~intended types~~proposed use and proposed ~~of~~ structure(s).

Exception: At the discretion of the Building Official for small projects, e.g., small addition, hot tubs / spas, the registered professional soils engineer or engineering geologist may submit a letter, based on observation of the soil condition, that the soils are adequate for the proposed use.

This amendment allows a lower level of engineering analysis when the project is minor in nature and, based upon the soils, the risk of damage to the structure from weak foundation soils is minimal.

~~6~~2. Pursuant to the Building Code:

a. The ~~City Manager~~ Building Official shall specifically review design or engineering features in the development application which are intended to compensate for Weak Foundation Soils.

b. ~~7.~~ The ~~City Manager~~Building Official may require modifications in the proposed design or engineering where necessary to assure adequate structural support~~, prior to submission of the application for public hearing or approval of a Development Permit~~.

This section has removed from it the parts that existed that are proposed to be moved up to LOC 50.42.015; the redlining shows the proposed changes and clarify the involvement of the Building Official.

Section 50.42.030 Miscellaneous Information.

Weak foundation soils are identified in the "Engineering Geology" report supplement and accompanying map of the Lake Oswego Physical Resources Inventory, March 1976.

These soils are also identified and described in the report entitled "Soil Survey Interpretations for Land Use Planning and Community Development, Lake Oswego Area, Oregon", USDA Soil Conservation Service, December 1975.

The SCS map units which correspond to the Engineering Geology units above are listed in "Table II: Characteristics and Limitations of Earth Materials" in the Engineering Geology Report of L.O.P.R.I.

Article 50.43
Hillside Protection

Section 50.43.005 Applicability.

This Article applies ~~to all development which includes hillsides or areas with erosion potential~~ in areas identified as "Slide Area," Slide Hazard," or parcels that have undisturbed slopes in excess of 12%; and where:

a. Minor and major development will involve proposed structures, or

b. Ministerial construction of structures where the requirements of this Article have not been previously addressed.

This amendment utilizes the designations in the Atlas, rather than through the broader definition:

> 5. Potential Severe Erosion Hazard Area: Surface areas where erosion can be easily caused by removal of vegetation cover, stripping topsoil or by placement of fill, whether by natural causes such as streams or surface runoff or by development activities. The placement of any new fill in such an area shall be considered as creating a potentially severe erosion hazard. (Known Potential Severe Erosion Hazard Areas are described and mapped in the Engineering Geology chapter of the Lake Oswego Physical Resources Inventory, March, 1976, on file at City Hall; specifically in Table II, "Characteristics and Limitations of Earth Materials" and "Engineering Geology" map, and the Relative Slope Instability Hazard Map of the Lake Oswego Quadrangle, prepared by the State of Oregon Department of Geology and Mineral Industries (DOGAMI), published in 1995.)
> 6. Potential Severe Landslide Hazard Area: Areas where earth movement or failure, such as slumps, mud flows, debris slides, rock falls or soil falls, are likely to occur as a result of development activities. These activities include excavation which removes support of soils by changes in runoff or groundwater flow or vibration loading such as pile driving or blasting.

The 12% slope category is included because the development standard regulates development on undisturbed slopes greater than 12%. Example:

> 5. Cuts and Fills. **On land with undisturbed slopes in excess of 12%,** cuts and fills shall be regulated in accordance with LOC Chapters 45 and 52, and as follows:
> a. Toes of cuts and fills shall be set back from boundaries of separate private ownerships at least 3 feet, plus 1/5 of the vertical height of the cut or fill. Where a variance is required from that requirement, slope easements shall be provided.
> b. Cuts shall not remove the toe of any slope where a severe potential landslide or erosion hazard exists (as defined in this standard).
> c. Any structural fill shall be designed by a registered engineer, in accordance with standards engineering practice; the engineer shall certify that the fill has been constructed as designed and in accordance with the provisions of LOC Chapter 45.
> d. Retaining walls shall be constructed in accordance with the Oregon State Structural Specialty Code, as enacted on January 1, 2002, or as thereafter amended by the Oregon Building Codes Division.

This development standard is applied at the time of both minor development (land division) and ministerial (building permit). LOC 50.79.015(3); 50.79.025(1)(b). When applying the percentage of the "site" that can be developed, if it is applied at both times, more of each lots is subject to protection than intended. This amendment "exempts" the area of lots which were previously determined to be developable, but still applies the construction standards for development on those steep slope areas. This amendment is consistent with Planning Division

past practice that "once the project is approved, then the building permits are assumed to be in compliance with the standard based on the showing in the original review."

Section 50.43.015 Approval Standards.

1. All developments on undisturbed slopes shall be designed to minimize the disturbance of natural topography, vegetation and soils.

~~2. Designs shall minimize cuts and fills.~~

The standards below specify the level of "minimization" required.

~~3~~2. Cuts and fills shall conform to the minimum requirements of LOC Chapter 45.

~~4~~3. Development Prohibited.

a. Where landslides have actually occurred, or where field investigation confirms the existence of a severe landslide hazard, development shall be prohibited except as provided in subsection b.

b. Exceptions. A licensed geotechnical engineer, registered civil engineer experienced in soils engineering, or licensed engineering geologist shall certify that methods of rendering a known hazard site safe for construction are feasible for a given site. The applicant shall establish that the proposed methods are adequate to prevent landslides or damage to property and safety. The granting authority may allow development in a known or confirmed landslide hazard area if specific findings are made that the specific provisions in the design of the proposed development will prevent landslides or damage. The granting authority may apply any conditions, including limits on type or intensity of land use, which it determines are necessary to assure that landslides or property damage will not occur.

~~5~~4. Cuts and Fills. On land with undisturbed slopes in excess of 12%, cuts and fills shall be regulated in accordance with LOC Chapters 45 and 52, and as follows:

a. Unretained ~~Toes~~ toes of cuts and fills shall be set back from boundaries of separate private ownerships at least 3 feet, plus 1/5 of the vertical height of the cut or fill. Where a variance is required from that requirement, slope easements shall be provided.

This has delayed or prevented a cut at the property line for construction purpose, including installing foundation framing or a retaining wall. In areas where there is zero setback, you must often cut or fill up to the property line to accomplish the permitted development.

b. Cuts shall not remove the toe of any slope where a severe potential landslide or erosion hazard exists (as defined in this standard).

c. Any structural fill shall be designed by a registered engineer, in accordance with standards engineering practice; the engineer shall certify that the fill has been constructed as designed and in accordance with the provisions of LOC Chapter 45.

d. Retaining walls shall be constructed in accordance with the Oregon State Structural Specialty Code, as enacted on January 1, 2002, or as thereafter amended by the Oregon Building Codes Division.

e. No more than 65% of area in undisturbed slopes of 20% - 50% shall be graded or stripped of vegetation.

~~6~~5. Roads shall be the minimum width necessary to provide safe vehicle access, minimize cut and fill, and provide positive drainage control, all in accordance with LOC Chapter 42.

~~7~~6. Land over 50% undisturbed slope shall be developed only where density transfer is not feasible. The development will provide that:

a. At least 70% of the site will remain free of structures or impervious surfaces.

b. Emergency access can be provided.

c. Design and construction of the project will not cause erosion or land slippage.

d. Grading, stripping of vegetation, and changes in terrain are the minimum necessary to construct the development.

Section 50.43.020 Construction Standards.

1. All development activity on undisturbed slopes shall minimize stripping or other soil disturbance and shall provide prevention measures in accordance with LOC Chapter 52, Erosion Control Standards.
2. Plastic mulch may be used only temporarily, during construction activities.
3. Slope stabilization and re-vegetation measures:

a. No grading, clearing or excavation of any land shall be initiated prior to approval of the grading plan. The plan shall be approved by the City Manager as part of the Development Permit.

b. The developer shall be responsible for the proper execution of the approved grading plan.

~~c. No more than 65% of area in undisturbed slopes of 20% - 50% shall be graded or stripped of vegetation.~~

This is really an approval standard, and is moved to LOC 50.43.015(4), as subsection (e).

Article 50.55
PARKING

Section 50.55.005 Applicability.

1. The provisions of this Article shall apply to all development which generates a parking need. This shall include the construction of new structures, the remodeling of existing structures and a change of use which increases on-site parking or loading requirements or which changes access requirements.
2. This Article does not apply to development subject to:
   a. Downtown Redevelopment District Overlay. See LOC 50.65.055 (Parking Requirements)

This amendment reflects the change in LOC 50.65.005, which provides that the general parking standard is superseded in the Downtown Redevelopment Design District.

[**Cross Reference**: LOC 50.07.050 - Parking in R-6 Zone.]

Section 50.55.010 Standards of Approval

1. Vehicle Parking:

a. Required parking spaces shall be available for the parking of operable passenger vehicles of residents, customers, patrons and employees and shall not be used for the storage of vehicles or materials or for the loading and unloading or parking of vehicles used in conducting the business or use.

b. Number of Required Parking Spaces~~:~~. The number of required parking spaces under this Article shall be determined by either the Numerical Method [subsection (i)] or the Parking Study method [subsection (ii)] below.

i. Numerical Method. Refer to Appendi~~x~~cies 50.55.010(1)-A and 50.55.010(1)-C to determine the number of parking spaces required. The minimum number of parking spaces specified for each type of use shall include reductions to parking requirements pursuant to subsection (e)(i) below and Appendix 50.55.010-C~~are the minimum standards~~. ~~Fractional space requirements shall be counted as the next highest whole space.~~

This amendment requires the reduction factors to be applied, in order to reduce the number of parking spaces. This is generally used by developers, but should be required when calculating the maximum amount of parking in subsection ii below.

The "fractional space rounding" is moved into the below table.

(In the case of mixed uses, the total requirements for minimum parking requirements shall be the sum of the requirements for the various uses computed separately.)

Numerical Method of Determining Minimum Parking Spaces Required		
Determine:		Method of Determining:
Floor Area Amount		1. From LOC Appendix 50.55.01-A, determine if floor area is used to calculate the number of parking spaces required for the use(s). (Floor Area per Parking Space) 2. Apply the "Floor Area Adjustment for Retail Use on Ground Floor" exemption, if applicable, to the Floor Area Amount.
Number of Employees		Determine number of full-time, temporary, part-time and contract employees, or independent contractors, if employee count is used in LOC Appendix 50.55.010-A to calculate the number of parking spaces required. (Employee Per Space amount)
Gross Parking Requirement		1. Multiply the adjusted Floor Area Amount by the Floor Area per Parking Space. 2. Multiply the Number of Employees by the Employee Per Space amount. 3. Add the results of (1) and (2) above together.
Reductions		1. See LOC Appendix 50.55.010-C for possible reductions. 2. Apply reduction percentages to Gross Parking Requirement.
Rounding		Any fractional space amount determined following the application of Reductions above shall be rounded up to the next highest whole space.
Minimum Parking Requirement		The minimum parking requirement is the "rounded" number above.

This "methodology table" conforms to the methodology table in the Downtown Redevelopment Design District proposed, and is added for clarification of the method of determining the required parking spaces, as well as clarifying what "employees" means for parking calculations.

ii. Parking Study Method. Use the methodology for determining the parking needs of the proposed use as provided in LOC 50.55.010(1)(b)(vi).

~~ii~~iii. Except for residential parking requirements, the maximum number of parking spaces shall not exceed the number of parking spaces required under LOC Appendix 50.55-A, or 125% of the minimum number of required spaces calculated pursuant to subsection (i) or (ii) above, whichever is greater.

This amendment clarifies that the "maximum number" is either per Appendix 50.55-A, or 125% of Appendix 50.55-A and Appendix 50.55-D (the reductions)..

~~iii~~iv. Handicapped parking and ramps shall be provided in accordance with the Uniform Building Code.

~~i~~v. In the case of mixed uses, the total requirements for off-street parking facilities shall be the sum of the requirements for the various uses computed separately.

vi. When Use Not Expressly Listed. When the proposed use is not expressly listed within LOC Appendix 50.55.010(1)-A, then pursuant to LOC Appendix 50.55.010-A, Section H, the minimum number of required parking spaces shall be determined by using either "the use most similar" to the proposed use or a parking study. If the applicant elects to determine the number of parking spaces required by a parking study, the parking study shall comply with the following:

This amendment expressly addresses the procedure for a "most similar use" parking study. At present, there are no guidelines.

(1). The total number of parking spaces required shall equal the number of spaces determined to be necessary to accommodate the average peak parking demand generated by the development use(s). "Peak parking demand" means the maximum number of parking required during the hours for the normal use of the business. The parking study shall be conducted by a registered traffic engineer.

City Traffic Engineer Massoud Saberian advises that (1) traffic "engineers" do include the realm of parking studies, determining peak hours, etc., and (2) a "qualified traffic engineer" is still somewhat undefined – many people call themselves traffic engineers and there is no licensing or educational background required to be a "traffic engineer". According to Mr. Saberian, an unregistered traffic engineer could be anyone that has an opinion about traffic, especially if they share that opinion for a living. Staff suggests that a higher degree of certification is desired; a "registered" traffic engineer would result in the person having obtained specialized educational training in traffic engineering (including parking studies).

(2). In preparing the parking study, the traffic engineer shall consider relevant references, guides, and factors that aid in the average peak parking demand determination. Such references, guides, and factors may include, but are not limited to:

i. The factors and considerations recommended by the ITE Industry Standards.

ii. Availability and projected use of alternative transportation modes (common-use vehicle, carpooling, bicycle, pedestrian, transit, etc.).

iii. Parking demands at similar types of facilities, in similar types of locations, either within the City or elsewhere.

(3). Notwithstanding any other provision of this Code to the contrary, the minimum number of parking spaces determined to be necessary pursuant to this subsection shall not be eligible for reduction pursuant to subsection (e)(i) below or Appendix 50.55.010-C

c. On-Site Location of Required Parking Spaces:

i. All required parking shall be off-street. Parking may not be located in a required yard, or special street setback, except where there are specific yard setback requirements for parking established by the zone.

This amendment corrects a conflict – generally parking is not permitted in a reserved area, but in the commercial zones, when adjacent to the residential zone, the setback to structure is 25 feet, but parking lots are permitted more than 10 feet from the lot line, and hence within the structure's setback area.

ii. Except for tandem parking in residential developments of single-family detached and attached dwelling units, duplexes, and zero lot line dwelling units, design shall insure that the parking of any vehicle shall not interfere with the parking or maneuvering of any other vehicle.

d. Parking Options:

i. Within commercial, public use, industrial and campus institutional zones, parking may be provided on remote lots within said zones which are within 500 feet of the property line of the use to be served. Within the EC (East End General Commercial) zone only, unless otherwise prohibited, employee parking may be allowed within 1,000 feet of the property line of the use to be served. If the remote parking lot is not owned by the owner of the property of the use to be served, said owner shall obtain an exclusive permanent easement in the remote lot so as to permit parking from the use to be served in parking spaces on the remote lot.

The amendment makes it clear that

1. Both the primary lot and the remote lot must be within the commercial, industrial and campus institutional zones for this section to apply. This section was not intended to permit a use (parking) in a non- commercial, industrial and campus institutional zone. This has been the historical interpretation.
2. The remote lot can be either owned by the development lot owner or under an exclusive easement. However, the "exclusive" easement is as to businesses that are not located on the development lot or remote lot (meaning that the remote lot parking spaces can themselves be shared with the development lot). "Exclusive does not mean that each parking space must be designated as to a specific business; it can be non-exclusive as to the businesses to be served by the parking lot. This is consistent with historical interpretation.

ii. Shared parking. Shared parking is allowed when a parking study demonstrates that ~~if the application can demonstrate that the combined peak use is provided for by a parking study that demonstrates (a) There are a sufficient number of parking spaces to accommodate the requirements of the individual businesses; or~~

~~(b) That the peak hours of operation of such establishments do not overlap, and~~

~~(c) That an exclusive permanent easement over a delineated area has been granted for parking space use.~~there are a sufficient number (by actual or estimated count) of parking spaces to accommodate the parking needs generated by the applicant and other parking lot users during the applicant's period(s) of use of the parking lot. A new parking study shall be submitted upon any one of the following events:

During review of a multi-retail facility (Centerpointe Shops), it became clear that this subsection did not accomplish what was intended and what has been the historical practice. The focus in a combined parking study is not the times of peak use (whether one or more overlap is irrelevant; the focus is whether, when they overlap, is there remaining actual parking spaces available because another business has freed up the needed parking for that time period. Subsection b points out the inconsistency -- this is a *combined* peak use study but if they are combined, then you can't use a parking study under subsection b.

(a) Change from one type of use to another that has higher number of parking spaces required by Appendix 50.55-A for the new use.

(b) Where one use expands into the area of another use and it results in:

(1). A 10% or more increase in the number of parking spaces that would be required for the use under LOC 50.55.010(1)(b)(i) or (iv), as if that method were applied to the use to determine the parking needs, rather than through a parking study; or

(2). For an "eating or drinking establishment" or a type of commercial amusement business, any increase in the number of parking spaces that would be required for the use under LOC 50.55.010(1)(b)(i) or (iv), as if that method were applied to the use to determine the parking needs, rather than through a parking study.

These subsections address the period of validity of a parking study. A parking study is based upon the parking needs generated by the *specific* parking needs of *specific* businesses. However, staff seeks to minimize the necessity for new parking studies when there is a change of use that is not *likely* to result in greater parking generated by the new business. Whether a business is likely to generate a greater parking need is determined by referencing the parking requirements under Appendix 50.55-A. Although it is recognized that these minimum parking requirements necessarily are inexact as applied to an specific business – a business that is more successful than the average business in that category will generate a greater parking need, and similarly a business that is less successful will not require as much parking – the Appendix provides a reasonable standard to usually determine when a change in use, or small expansion in use, will generate sufficient additional parking demands as to be material. This flexibility is not extended to restaurants and commercial amusement businesses, i.e., theater, sports club, video arcades, health clubs, because of their relatively high parking requirements – restaurants are 13.3 spaces per 1000 GFA, theaters are 1 space per 4 seats, and health clubs (large GFA required for the business) are 2 spaces per 1000 GFA.

Note: By referring to the minimum parking requirements under LOC 50.55.010(1)(b)(i) or (iv), the 10% increase in minimum required parking is based after the rounding up of any fractional spaces has occurred under (b)(i) and any mixed use components were added together under (iv).

e. Reduction for Parking Space Requirements:

i. Parking space requirements ~~may~~ shall be reduced in developments where compensating factors exist which would offset the parking demand (such as Access to Transit Facilities, Pedestrian and Bicycle Access, Development Size, or combined, or the Parking Study provision). Refer to Appendix 50.55-C for reduction options.

This amendment requires the reduction factors to be applied, in order to reduce the number of parking spaces. This is generally used by developers, but should be required when calculating the maximum amount of parking in subsection ii below.

ii. Within the East End General Commercial zone only, only the parking modifiers permitted by LOC 50.65.055 (Downtown Redevelopment District Design Standards) and Development Size, or the Parking Study provision are permissible for reduction options.

f. Parking Dimensions:

i. Refer to Appendix 50.55-B to determine the minimum dimension and layout of parking spaces.

ii. The minimum dimension to meet single family residential parking space requirements shall be 8 feet 6 inches wide and 18 feet 6 inches long for each space.

iii. Up to 50% of the total parking requirement may be provided in compact car spaces. All parking spaces designated for compact vehicles shall be signed or labeled by painting on the parking space.

g. Loading:

Loading berth in sufficient numbers and size to adequately handle the needs of the development shall be required. The off-street parking areas to fulfill the requirements of this standard shall not be used for loading and unloading or the storage of vehicles or materials or parking of trucks used in conducting business or use.

h. Employee Carpool and Vanpool Parking:

Development in commercial and industrial zones and in the Public Function zone which requires a total of 50 or more parking spaces shall designate at least 5% of the number of parking spaces as employee carpool or vanpool parking. The carpool/vanpool spaces shall be full sized parking spaces. The spaces shall be clearly marked "Reserved-Carpool/Vanpool Only" with hours of use. Except for designated handicapped parking spaces, employee carpool and vanpool parking spaces shall be located as follows:

i. Where employee parking spaces are designated, the designated carpool and vanpool parking spaces shall be the closest employee parking spaces to the entrance normally used by employees.

ii. Where employee parking spaces are not designated, designated carpool and vanpool parking spaces shall be located in close proximity to the building entrance normally used by employees.

2. Bicycle Parking:

a. Bicycle parking shall be provided for all new multiple family residential developments (4 units or more) and commercial, industrial, public facilities and institutional uses, except seasonal uses, such as fireworks stands and Christmas tree sales; drive-in theaters; and self-storage facilities are exempted.

b. The minimum number of required bicycle parking spaces are listed in Appendix 50.55-D, provided however that the owners of Institutional Categories under Appendix 50.55-D may defer installation of a portion of the required bicycle parking facilities if:

i. At least 30% of the required bicycle parking facilities are installed prior to issuance of the certificate for occupancy;

ii. The owner executes and records with the County Clerk of the county in which the property is located a covenant to undertake Bicycle Parking studies, and install a percentage of required bicycle parking facilities, as follows:

Table 50.55.010
Bicycle Parking Studies and Required Parking Percentage

Timing of Bicycle Parking Study	Required Percentage of Installed Bicycle Parking Facilities
Within 90 days following certificate of occupancy	150% of the greatest number of bicycles being parked or stored on the property at any time during the 14 day period of a Bicycle Parking Study, up to the required number of bicycle parking facilities per Appendix 50.55-
Two studies within one year following initial study	
Whenever requested by City Manager	

Table has been given a Table reference to the relevant code section, and a short title. A provision of this ordinance authorizes the City Recorder to provide table references and titles to all tables within sections of LOC Article 50.

The methodology and timing of the bicycle parking studies shall be proposed by the Owner, for review and approval of the City Manager. Based on the results of any of the bicycle parking studies, the owner shall install additional needed bicycle parking facilities within 60 days following completion of the Study. The cost of the bicycle parking studies, and installation of the bicycle parking facilities, shall be at the expense of the property owner. If the owner does not comply with the terms of the covenant, the City may give notice to the property owner to install the balance of the required bicycle parking facilities within 15 days following the date of the notice.

c. Modifications which increase the size of existing commercial, industrial, Public Function structures or institutional buildings by more than 10% or a change of use shall provide bicycle parking spaces to meet the requirements of Appendix 50.55-D for the entire development. For the purposes of this section, an "existing building" is a building as it exists on February 19, 1998.

d. Bicycle parking shall be separated from car parking and vehicular traffic by a physical barrier or sufficient distance to protect parked bicycles from damage by vehicles.

e. Bicycle parking for multiple uses may be clustered in one or several locations meeting all other requirements specified in this section for bicycle parking.

f. 100% of all required bicycle parking spaces ~~for industrial categories~~ shall be covered. These required bicycle parking spaces may be provided within a building. ~~Bicycle parking spaces for employees of commercial, public use, and institutional uses are encouraged to be covered and secured.~~ Cover for bicycle parking may be accommodated by building or roof overhangs, awnings, bicycle lockers, bicycle storage within buildings or free standing shelters.

This amendment requires multiple family residential developments (4 units or more), commercial, public facilities and institutional uses, except seasonal uses, such as fireworks stands and Christmas tree sales; drive-in theaters; and self-storage facilities, to meet the same covered bicycle parking requirement as industrial users. This conforms with past practice, and encourages bicycle use for those types of uses that are likely to attract bicyclists. Note: covered parking may be satisfied by in-building parking.

g. Not less than 25% of the required bicycle parking inside a building shall be provided in a well illuminated, secure location within 50 feet of a building entrance. The balance of the number of required bicycle parking shall be provided either inside each individual dwelling unit or inside each individual dwelling unit's designated storage area within the building.

h. Outdoor bicycle parking spaces shall be clearly visible and shall be located within 50 feet of any entrance to the building unless clustered pursuant to subsection (2)(e) in which case the parking spaces shall be no more than 100 feet from a public entrance.

i. If the required bicycle parking spaces cannot be provided on-site within the EC (East End General Commercial) zone, bicycle parking racks may be provided on the sidewalk adjacent to the property's frontage providing a minimum five foot unobstructed sidewalk width is maintained.

j. Bicycle parking spaces shall be a minimum of 6 feet long and 2 feet wide, and provide a minimum 5 foot access aisle. For covered spaces the overhead clearance shall be at least 7 feet.

Appendix 50.55-A Minimum Off-Street Parking Space Requirements
Appendix 50.55-A is modified as follows**:**

1. Section C(7)[Places of Public Assembly]

Section C(7) shall be moved to and made a part of Section E(15) [Commercial] and shall be modified to read as follows

(~~C~~D)~~7~~ 15 . ~~Schools such as martial~~ Martial arts, music, dance, gymnastics, yoga studios		1 space per 100 square feet G.F.A. of lesson activity floor area, plus .5 space per employee

This amendment reclassifies group lesson instruction uses from "Places of Public Assembly" to "Commercial" because they bear little relationship to churches, elementary or high schools, and the like. Such studios are typically smaller scale and for a commercial purpose.

2. Section H [Uses Not Specifically Mentioned]

"Parking requirements for uses not specifically mentioned in this section shall be determined by the requirements for off-street parking facilities for the listed use which, as determined by the City Manager, is most similar to the use not specifically mentioned, or by ~~a parking study~~an analysis of the parking needs generated by the type of use (See LOC 50.55.010(1)(b)(v).."

This amendment is proposed to avoid confusion with the *shared* parking study.

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Appendix 50.55-C Parking Requirement Modifiers
Delete existing Appendix with below. Redline changes show non-format changes.

Appendix 50.55.010-C
Parking Requirement Modifiers

Types of Modification	Modification Requirements and Modifiers			
Development Site Size (DS)	Commercial, Public, and Industrial Uses (Based on Development Size on a Single Site (DS) Gross Floor Area 1 - 20,000 Sq. ft. > 20,000 Sq. ft.		Multiplier No reduction .85 x requirement	
Access to Transit Facilities (TA)	Transit Shelter	On Fronting Street	Within 50 feet of building	.85 x requirement
	Transit Shelter		Within 500 feet of building	.~~95~~ 90 x requirement
	Transit Facilities	On Fronting Street		.90 x requirements
	Transit Facilities ~~More than 500 feet of building~~			No reduction
Downtown Redevelopment District (see below)				
Pedestrian and Bicycle Access (PA)	**Commercial, Public and Industrial Uses** ~~No hard surfaced pedestrian/bicycle access~~		~~No reduction~~	
	~~Hard surfaced pedestrian and bicycle access to~~ 100 or more residential units within 1000 feet		.90 x requirement	
Downtown Redevelopment District (see below)				
Downtown Redevelopment District	.75% x requirement ~~(Refer to Lake Oswego Development Standard Article 50.65, Downtown Redevelopment District Design Standard ([LOC 50.65.055] for special parking requirement modifications permitted within the District.)~~			
Parking Study	The parking study shall demonstrate sufficient number of parking spaces~~:~~ ~~a.~~ ~~f~~For Shared Parking with other multiple users per LOC 50.55.010(1)(d)(ii~~);~~).			

	~~b. Based on similar uses elsewhere in the City or the same use at other sites.~~

Note: Currently, the Code suggests that a parking study can be used to reduce the parking requirements for uses that are listed in Appendix 50.55-A, in order to reduce the parking requirements below that which would result from DS, TA, PA, and Downtown. Under Parking Study, Item (b), staff proposes that this be deleted *as a modifier* to the parking requirements. A parking analysis is performed under Appendix 50.55-A for businesses that are not specifically listed. If the desire is to allow an applicant to seek a parking reduction based on a parking study *regardless* of the Code requirements, i.e., an exception to the parking standards, then it should be clarified and the standards for the exception should be stated.

~~**Definitions:**~~
~~Transit Access: Availability of transit service as delineated above.~~
~~Pedestrian Access: The means by which pedestrians have safe, adequate and usable ingress and egress to a property or use.~~

Method to Calculate Minimum Parking Spaces Through Modifiers

Within Downtown Redevelopment District	Minimum Requirement by type use x DS x 0.75 = modified parking requirement. For additional modifiers in the ~~(Refer to Lake Oswego Development Standard Article 50.65,~~ Downtown Redevelopment District, see ~~Design~~ Parking Standard ~~{~~LOC 50.65.055(1)(b) - (f)~~} for special parking requirement modifications permitted within the District.~~
Outside Downtown Redevelopment District	Minimum Requirement by type use x DS x TA x PA = modified parking requirement

Public Use (Public Facilities) added to type of uses that qualify for development site size parking reduction since parking effect of a public facility would be similar to commercial or industrial uses.

Reduction for transit shelter within 500 feet of building increased from 5% to 10%. As noted in Centerpointe approval, "Under Appendix 50.55-C, a 10% reduction is available if transit is available on the fronting street without a shelter. A 5% reduction is available if transit is available within 500 feet of the building with a shelter. This sets up the anomalous situation … of a greater reduction being if there was no shelter on Kruse Way than because there is a shelter available."

The requirement for "safe, adequate and usable" access to 100 units within 1000 feet is eliminated because (1) it conforms with current practice, (2) people walk, regardless of determining "safe, adequate and usable"; and (3) this creates a discretionary review, eliminating the ability to approve change of use ministerially.

The reductions available within the Downtown Redevelopment District has been clarified and attention to the special parking provisions has been highlighted.

The option of a parking study for businesses that are expressly listed in Appendix 50.55-A should not be a "reduction", but rather a parking study should be used only as a determination of the parking requirement. See Appendix 50.55-A, last paragraph. Once the parking number is determined, *then* the modifiers can be applied.

Article 50.68
VARIANCES

LOC 50.68.015 Classification of Variances

A variance which would allow development not in conformance with the requirements of the development standards may be granted.

1. Class 1 (minor) variances are small changes from the Code requirements and which will have little or no effect on adjacent property or users.

Class 1 (minor) variances include:

a. Variance from front, rear, side, street side yard setback requirements of the zone and from the Oswego Lake setback for a single-family dwelling, zero lot line dwelling, or ~~its~~ their associated accessory structures that do~~es~~ not comply with the three criteria set forth in LOC 50.14.005 (5)(a)-(c), of 20%, or less.

This amendment conforms to the interpretation of what yard setback requirements are eligible for Class 1 variances, and by such a listing expressly excludes other types of reserved areas being considered for Class 1 variance requests, i.e., sensitive lands buffers, special street setback, etc.

This amendment also allows a Class 1 variance for zero lot line dwellings, similar to attached single family dwellings.

b. Variance from yard setback requirements for a structure other than those described in subsection (1)(a) of this section of two feet or less in side or front yards or five feet or less in rear yards.

c. Variances from minimum lot width or depth of 5 feet or less.

d. Variances in lot coverage or floor area ratio (FAR) on platted lots which were platted with an area less than the current zoning requirement for single-family residential dwellings and accessory structures of up to and including 15% of the maximum allowed lot coverage or FAR.

e. Variations from maximum fence height restrictions.

f. Variation to the maximum grade of a private street or driveway.

g. Variances for construction of a dormer that does not exceed the height of the roof ridge in which the dormer is being constructed in an existing single family detached dwelling that is non-conforming relative to lot coverage or setbacks.

h. Variances to distance of driveway from intersections (LOC 50.58.015).

i. Variances to street frontage (LOC 50.57.015), at the time of creation of subdivision lots.

This amendment would limit the availability of street frontage variance to subdivision lots, and then only when the lot is created. Current code seems to allow variance to street frontage requirements for partitions as well, and would have the effect of avoiding the flag lot standards. If sought *in lieu of the frontage requirements for flag lots,* the lot would arguably not be a flag lot and thus not subject to the flag lot standards for building. By restricting the lot frontage requirement to subdivisions, since most subdivisions are created under the PD standards, the issues of screening and buffering in flag lot partitions would be addressed through the PD's "same or better sense of privacy, scale, and open space."

j. Variances to driveway width for Flag Lots (LOC 50.20.020).

Article 50.69
CONDITIONAL USES

Section 50.69.085 Specific Standards for ~~non-profit~~ office uses in Structures on the City's Historical Landmarks List and which are Located on Arterial Streets.

An amendment proposed in the lower-density residential zones would allow office uses in historic buildings. It is a means of expanding the permitted uses of historic homes, resulting in a greater incentive to preserve historic structures. There is really no difference in the effects of the use whether the entity is registered as a for-profit or non-profit offices.

Option: Should the classification of the street be reduced to major collector, in order to include additional landmarks?

Option: Should there be a limitation on parking, in addition to the Development Standards, so that the increased parking does not degrade from the historic character of the site.

1. Public services are adequate to serve the facility.
2. The site has adequate area for the anticipated parking needs or off-site, shared use parking is available within 500 feet of the site.
3. Access should be located on an arterial street, if practicable. If access is to a local ~~residential~~ street, consideration of a request shall include an analysis of the projected average daily trips to be generated by the proposed use and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the use. A traffic study will be required of the applicant to identify the projected average daily trips to be generated and their distribution pattern. Uses which are estimated to generate fewer than 20 trips per week shall be exempted from the requirements of this subsection (3).

Option: Should the classification of the street be reduced to major collector, in order to include additional landmarks?

Option: Should there be a limitation on parking, in addition to the Development Standards, so that the increased parking does not degrade from the historic character of the site.

This amendment permits this standard to apply to non-residential local streets. Note: The Comprehensive Plan, Goal 12, refers to "local residential streets" (Goal 3, especially Policy 1), and "Local Streets / Residential" (Figure 16, Functional Classification). This inadvertently omits local streets that serve non-residential areas, e.g., commercial, industrial, etc. Staff believes that "local residential street" or "local streets / residential" is a subclass of "local streets", and that the CDC should include all types of streets within its definition of "streets". Staff will be addressing the name and functionality of non-residential local streets in the Comprehensive Plan periodic review, as well as proposing corresponding changes to other LOC references of "local residential" streets: LOC 42.03.010, 42.03.060, 42.03.075, 42.08.400.

4. Noise generating equipment shall be sound buffered when abutting a residential use.
5. Exterior lighting and signage shall be designated to avoid glare onto adjacent residential uses.
6. Levels of operations shall be adjusted to avoid conflict with adjacent uses, where practicable.
7. The historical designation of the property shall be maintained throughout the period of the conditional use. The property owner shall provide a deed restriction with the application which ensures that the property owner will not remove the property from the City's Historical Landmark List for the

duration of the conditional use permit. Request for removal from the list shall void the conditional use permit.

Article 50.70
Non-Conforming Uses and Structures

This article is more than non-conforming uses. See, for example, LOC 50.70.005(1): "A use or structure is considered non-conforming if …." This amendment matches the title of the article with the scope of the text of the article.

Option 1 – eliminate .020 and .030 in exchange for allowing just not expanding non-conforming structures under LOC 50.70.005(3).

Option 2 – eliminate just .030.

Section 50.70.005 Non-Conforming Use, Structure Defined; Rights Granted.

1. A use or structure is considered a nonconforming use or structure if the use or structure was lawfully established, but does not comply with or would not be permitted to exist under a subsequent enactment or amendment to this Code.

2. a. A use or structure for which a variance was granted under these code provisions is not considered non-conforming solely by the fact that the characteristic of the use or structure for which the variance was granted fails to comply with the requirements of this Code. The existence of such variance does not prevent the use or structure from being classified as non-conforming if some other characteristic of the use or structure fails to comply with the requirements of this Code.

~~b. A residential structure which is classified as a non-conforming structure by this section may be enlarged or expanded in a manner which does not increase the degree of non-conformity.~~

This section is proposed for elimination because with the changes to subsection (3) below, it would be duplicative. A structure may be repaired or expanded so long as the non-conformity is not increased.

3. Subject to the provisions of this Article, and except as otherwise provided by this Code, a non-conforming use or structure may be repaired, continued and maintained ~~in reasonable repair~~ so long as the use ~~it~~ remains otherwise lawful, and the structure is ~~but it shall~~ not ~~be~~ altered in a manner to enlarge or expand ~~or reconstruct the use or~~ the structure that increases the degree of non-conformity.

This amendment incorporates the "repair" provision of 50.70.030 into a single provision – whether the repair is for structural or non-structural purposes, so long as the repair does not enlarge or expand the degree of non-conformity, it would be permitted.

Section 50.70.020 Destruction, Movement and Replacement of Structures.

1. If a non-conforming structure is damaged or destroyed by any means to the extent that the cost of rebuilding the damaged portions would exceed 50% of the then current replacement cost of the entire building, the rebuilding shall conform fully to City Codes and Standards. Determination of the rebuilding costs shall be made by the City Manager, who may utilize an appraisal or other suitable method to determine current replacement costs. If the damage is 50% or less of the current replacement costs, the rebuilding or reconstruction need not comply with the terms of this Code only to the extent that the

destroyed portions of the structure failed to conform. In order to utilize the rights granted by this subsection the reconstruction must be commenced within one year of the date of the damage and completed within two years of such date.

2. If a non-conforming use is moved for any reason from the property on which it is located for any distance it shall thereafter conform with the requirements of this Code.

These two sections - .020 and .030 present untold complications, particularly when they are used in combination. Why would non-bearing repairs and maintenance be excluded if those could exceed 50% of the value of the structure, where as a structural repair it triggers this complicated analysis as to what portion of the repair is "the rebuilding shall conform"? Since it is only the rebuilding that has to comply, why not just leave it at that, and not worry about having to parse out the structural from the roof materials / non-bearing walls / wiring, plumbing?

Section 50.70.030 Repairs and Maintenance.

On any non-conforming structure or portion of a structure containing a non-conforming use, normal repairs or replacement of non-bearing walls, roof materials (but not roof structural components), fixtures, wiring, or plumbing may be performed in a manner not in conflict with the other provisions of the City Code. Nothing in this Code shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

This amendment adds in roof materials to permitted "repairs and maintenance", which has been the historical practice.

These two sections - .020 and .030 present untold complications, particularly when they are used in combination. Why would non-bearing repairs and maintenance be excluded if those could exceed 50% of the value of the structure, where as a structural repair it triggers this complicated analysis as to what portion of the repair is "the rebuilding shall conform"? Since it is only the rebuilding that has to comply, why not just leave it at that, and not worry about having to parse out the structural

Section 50.70.035 ~~Reserved~~. Expansion of Non-conforming Structure and Compliance with Development Standards.

1. Unless otherwise required by subsection (2) below, the construction, enlargement or expansion relating to a non-conforming structure or use shall be required to comply with the development standards in proportion to the degree of the construction, enlargement, or expansion.
2. Any façade changes subject to design requirements under the Development Standards, i.e., LOC 50.45, LOC 50.67, shall comply with appearance standards of the applicable Development Standard, to the extent of the façade change.

This section clarifies when a non-conforming structure or use triggers the necessity to comply, at least in part, with a development standard. For example, if there is a change in the façade of a commercial structure, review occurs under LOC 50.45 (Building design) no change to existing landscaping or parking has been required because the applicant has a right to continue the non-conforming landscaping or parking. Similarly, however, if there is an expansion in the footprint of a non-conforming structure, additional landscaping and parking has been required *to the*

degree of the expansion (not that the development has to come into full compliance with the landscaping and parking requirements because of a small expansion.) This amendment codifies the interpretation of the *extent* of non-conforming status under LOC 50.70.005(3)[“a non-conforming structure may be continued so long as it remains otherwise lawful, but it shall not be altered in a manner to enlarge or expand or reconstruct the use or structure.

3. All Development Standards shall be fully applied to the site when the square footage of the combined footprints of structures on the site is increased by 50% or more, as cumulatively measured from January 1, 2009.

Subsection 2 clarifies when an enlargement or expansion would require the site / building be brought into full compliance. It is recognized that the applicability of the Development Standards to an existing structure may ultimately limit the ability of a non-conforming structure to incrementally expand, without coming into full compliance with the Development Standards. The goal for non-conforming structures is to strike a balance between the right to continue operation under an *existing* structure, or to allow some marginal expansion, but not remove the incentive (or barrier) to eventually bringing the site into full compliance if the development beyond a certain limit (say, 50%) occurs.

Article 50.79
TYPES OF DEVELOPMENT AND REVIEW CRITERIA FOR EACH TYPE OF DEVELOPMENT

Section 50.79.010 Ministerial Development Classification

1. A ministerial development is a development which requires a permit from the City where the decision:

a. Is made pursuant to land use standards which do not require interpretation or the exercise of policy or legal judgment;

b. Approves or denies a building permit issued under clear and objective land use standards; or

c. Determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations.

2. Ministerial developments include:

a. Exterior modification of single family detached dwellings, duplexes or zero lot line dwellings or modification of an accessory structure in the DD zone.

b. Construction or exterior modification of a detached single family dwelling, duplex, zero lot line dwelling or a structure accessory to such structures which:

i. Is not processed through the Residential Infill Design Review process (LOC Article 50.72).

ii. Is not located within a delineated RP resource or buffer area or RC protection area pursuant to LOC Article 50.16.

iii. Does not impact an Historic Landmark designated pursuant to LOC Chapter 58.

iv. Does not change the nature of the use or occupancy classification to a use that does not qualify as a permitted use in the zone or as an approved conditional use; or

v. Does not require special design review by the zone, design district, prior development approval or Overall Development Plan and Schedule (ODPS) for the development in which the subject property is located.

~~vi. Is not located on weak foundation soils as identified in LOC 50.42.030 (1).~~

~~vii. Is not located in a "Known Potential Severe Landslide Area" as defined in LOC 50.43.010.~~

Due to proposed changes to the LOC Article 50.42 and LOC Article 50.43, construction within an area marked as weak foundation soils or landslide would not exclude a building permit from being considered under ministerial. This would conform generally with existing practice.

vi~~i~~. Is not located in the Greenway Management Overlay District, as identified in LOC Article 50.15.

50.79.015 Review Criteria for Ministerial Developments

A ministerial development shall comply with the requirements of the zone, including overlay zones, in which the subject lot or parcel is located, and shall comply with the following sections of the Development Standards:

1. …..

~~2. LOC Article 50.40.~~

~~3~~2. Hillside Protection Standard - LOC Article 50.43 ~~.015 (3),(4),(5); 50.43.020; 50.43.030(5), (6), (7).~~

This amendment removes the subsections of Hillside Protection Standard, as the practice has been to review all of the subsections of the article. For example, subsection (7) addresses slopes greater than 50% and subsection (5) addresses slopes greater than 12%, but under current criteria only subsection (5) is addressed.

43. Weak Foundation Soils, LOC Article 50.42, for construction of structures where the requirements of LOC Article 50.42 have not been previously addressed for the development site.

This amendment conforms to current practice to require soils analysis when the site is initially developed, so that a soils report is prepared and then, later, when subsequent ministerial building permit is applied for, the building department would require the structure to be built in accordance with the soils report. If there is no soils report for the area on file, the Building Official has authority under the Building Code to require a soils report.

If the site already has a soils report, then the Building Official will require compliance with the soils report requirements under the Building Code and therefore this Development Standard need not be separately applied.

Sections 4. to 7. to be renumbered as Sections 5. to 8.