

ATTACHMENT B

[8/2/12 Version (Corrections from the 5/30/12 Version)]

Ord. 2526

[Planning Commission Version, with Commentary]

50.02.002 COMMERCIAL, INDUSTRIAL, MIXED USE ZONES

2. SPECIFIC STANDARDS FOR COMMERCIAL, MIXED-USE, AND INDUSTRIAL ZONES

e. Effect of Multiple Zone Designations.

e. Effect of Multiple Zone Designations.

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”, e.g., R-0/EC, CI/OC, OC/R-3, 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.

50.03.002 USE TABLE

2. RESIDENTIAL USE TABLE

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TABLE 50.03.002-1: RESIDENTIAL DISTRICTS USE TABLE												
P = Permitted Use   Blank = Not Permitted   C = Conditional Use												
[x] Table notes located at the end of the table												
Use Cat.	Use Type	Residential										Use Specific Standards
		R-15	R-10	R-7.5	R-6	R-5	R-DD	R-W	R-3 [8]	R-2	R-0 [8]	
RESIDENTIAL USES												

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[8]. If lot has multiple zones, e.g., R-0/EC, see LOC 50.02.002.2.e.

**50.03.002 USE TABLE**

**3. COMMERCIAL, MIXED-USE, INDUSTRIAL, AND SPECIAL PURPOSE DISTRICTS USE TABLE**

3. COMMERCIAL, MIXED-USE, INDUSTRIAL, AND SPECIAL PURPOSE DISTRICTS USE TABLE

TABLE 50.03.002-2: COMMERCIAL, MIXED-USE, INDUSTRIAL & SPECIAL PURPOSE DISTRICTS USE TABLE																	
P = Permitted Use   Blank = Not Permitted   C = Conditional Use																	
[x] Table notes located at the end of the table																	
Use Cat.	Use Type	Commercial, Mixed-Use, Industrial										Special Purpose			Use Specific Standards		
		NC [37]	GC	H C	OC [37]	EC [37]	CR&D	MC	WLG- [32]			I	IP	CI		PF	PNA
									OC	RMU	R-2.5						

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[37]. If lot has multiple zones, e.g., R-0/EC, see LOC 50.02.002.2.e.

**50.04.001 DIMENSIONAL TABLE**

**1. RESIDENTIAL LOW DENSITY ZONES**

**a. Dimensional Standards**

a. Dimensional Standards

Development in the R-7.5, R-10, and R-15 zones shall conform to the dimensional standards in Table 50.04.001-1 except as modified below.

TABLE 50.04.001-1: RESIDENTIAL – LOW DENSITY ZONES DIMENSIONS				
	R-7.5	R-10	R-15	Comments/Additional Standards
****				
MIN. LOT DIMENSIONS [3]				50.04.001.1.c
Area (sq. ft.)	7,500	10,000	15,000	Except PD [3]

TABLE 50.04.001-1: RESIDENTIAL – LOW DENSITY ZONES DIMENSIONS				
	R-7.5	R-10	R-15	Comments/Additional Standards
Width (ft.)	50	65	80	
Depth (ft.)	<del>100</del>	<del>100</del>	<del>100</del>	
****				
MAX. BASE HEIGHT (FT.)				
Primary Structure	[4]	[4]	[4]	50.04.001.1.g
Flat Lot	28	30	35	
Lot with sloping topography	32 [5]	34 [5]	35	
Sloped Lot	35	35	35	
Accessory Structure	Lesser of 24 or height of roof form of primary structure	Lesser of 24 or height of roof form of primary structure	Lesser of 24 or height of roof form of primary structure	50.04.001.1.g[6]
****				
****	<a href="#">[6] Building height exceptions shall not exceed the building height of the primary structure.</a>			

Min. Lot Dimensions: 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.

**50.04.001 DIMENSIONAL TABLE**  
**2. RESIDENTIAL MEDIUM DENSITY ZONES**  
**a. Dimensions**

a. Dimensions

Development in the R-DD, R-5, and R-6 zones shall conform to the dimensional standards in Table 50.04.001-3 except as modified below:

TABLE 50.04.001-3: RESIDENTIAL – MEDIUM DENSITY ZONES DIMENSIONS				
	R-6	R-5	R-DD	Comments/Additional Standards
****				
<b>MIN. LOT DIMENSIONS</b>				50.04.001.2.c
Area (sq. ft.)	6,000 per du	5,000 per du	SF/Duplex. 5,000 (total); MD 15,000 (total) [4]	Except PD
Width (ft.)	50	--	--	
Depth (ft.)	<del>100</del> <u>--</u>	--	--	
****				
<b>MAX. HEIGHT (FT.)</b>				50.04.001.2.g
Primary Structure	28	--	28	
Flat Lot	28	28	--	
Sloping Lot	[5]	[5]	--	
Sloped Lot	32	35	--	
Accessory Structure	Lesser of 24 <u>ft.</u> or height of roof form of primary structure	<u>Lesser of 24 ft. or height of roof form of primary structure</u>	28	

TABLE 50.04.001-3: RESIDENTIAL – MEDIUM DENSITY ZONES DIMENSIONS				
	R-6	R-5	R-DD	Comments/Additional Standards
****				

**Min. Lot Dimensions:** 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.

**Max. Height:** Consistent treatment of accessory structures vis-à-vis primary structures so that each zone has a primary and accessory height limitation, and similar exceptions to height. This amendment (1) establishes a 24’ specific height limitation for accessory structures, rather than the zone height limitation also applying to accessory structures. (2) Because there would now be a different height for accessory structures, the general exceptions to height currently applicable to accessory structures are formatted for accessory structures. (3) Height is nevertheless limited to no higher than the roof form of the primary structure.

Zones	Distinction between Primary and Accessory	Single Family Dwelling Height Exceptions	Peak-a-Boo Exceptions for Accessory Structure?
High Density	No	Yes	Yes
R-6	Yes	Yes	No
Low Density	Yes	Yes	No
DD	No	Yes	Yes
West Lake Grove	No	No	No

**50.04.001 DIMENSIONAL TABLE**  
**2. RESIDENTIAL MEDIUM DENSITY ZONES**  
**d. Floor Area – Additional Standards**

d. Floor Area – Additional Standards  
\*\*\*\*

iii. R-6 Zones

(1) Habitable Areas of Accessory Structures

Provided only one garage is located on the site, habitable areas of detached accessory structures that would normally be counted as floor area for purposes of floor area calculations, shall be exempt as follows in the floor area calculations, as follows:

- (a) For lots less than or equal to 10,000 sq. ft. in area – up to 200 sq. ft.
- (b) For lots greater than 10,000 sq. ft. in area – up to 400 sq. ft.

(2) ~~Floor Area of~~ Size of Accessory Structures

An accessory structure ≤ 18 ft. in height shall not exceed a total of 800 sq. ft. in size or the square footage of the ~~ground floor area~~ footprint of the primary structure, whichever is less. An accessory structure > 18 ft. in height shall not exceed a total of 600 sq. ft. or the square footage of the ~~ground floor area~~ footprint of the primary structure, whichever is less.

This amendment also: (1) removes the confusion as to whether the measure of the “area” of an accessory structure was to the “floor area” or just the gross area of the accessory structure, so that it is clear that garage area is included within the size limitation; and (2) clarifies that the area of an accessory structure is not merely the footprint, so that the area of a second floor is included.

**50.04.001 DIMENSIONAL TABLE**  
**2. RESIDENTIAL MEDIUM DENSITY ZONES**  
**g. Height – Additional Standards**

g. Height – Additional Standards

i. R-5 Height Restrictions for Primary Structures

(1) Projects > 1/2 Acre

For attached development in the R-5 zone, the primary structure height ~~may average 40 ft. over the project lot(s) with no individual structure exceeding 50 ft.~~ shall not exceed:

<u>No. of primary structures on site</u>	<u>Maximum base height for primary structures</u>
<u>One:</u>	<u>50 ft.</u>
<u>Two or more:</u>	<u>40 ft. average, with no individual primary structure exceeding 50 ft. base building height.</u>

Presently, where only one structure is located on site, it would be limited to the smaller “average” requirement, although if a much smaller accessory structure is added, then the primary structure can go up to the maximum primary structure height. This has the effect of added unneeded, small accessory structures. This historic application, however, has been to allow the highest amount for a single building on a ½ acre or greater site.

Infill’s use of base building height clarifies that the exceptions to maximum building height are in addition to the height adjustments permitted for sites greater than 1/2-acre.

(2) Base Height

Except as provided in LOC 50.04.001.2.g.i(1) above, and LOC 50.04.001.2.g.i(4) and LOC 50.04.001.2.g.ii below, the base height of a structure in the R-5 zone shall not exceed:

(a) Flat Lots – 28 ft.

(b) Lots with Sloping Topography – See g.iii, below.

(c) Sloped Lots – 35 ft.

(3) In the R-5 zone, a structure shall not exceed the base height standards set forth in LOC 50.04.001.2.g.i(2), above, if the structure is closer than 60 feet to a lot carrying a residential designation other than R-0, R-3, or R-5.

(4) Exceptions to Base Building Height

A greater height than otherwise permitted is allowed for single-family dwellings – building height may be increased by one foot for every five additional feet in yard setback on all sides, beyond the underlying zone code standards provided in LOC 50.04.001.2.g.i(1) and (2), above.

ii. Exceptions to the Base Building Height Applicable to All Zones [and to Projects > 1/2 Acre in R-5 Zone.](#)

This amendment clarifies that the exceptions for roof form are in addition to the exceptions for project height in the R-5 Zone.

A greater height than otherwise permitted is allowed for roof forms, or architectural features, such as cupolas or dormers provided that these roof forms or features:

- (1) Do not extend more than six ft. above the maximum specified base height;
- (2) Do not, in total, exceed one-third of the width of the building for an individual roof form or projection or do not exceed one-half of the width of the building for two or more separate roof forms or projections, as measured on any elevation drawing; and
- (3) Do not, in total, cover more than 20% of the roof area on which they are located, as viewed from directly above for an individual roof form or projection or 30% for multiple roof forms or projections.

Examples of permitted exceptions are illustrated in Figure 50.04.001-B.



**50.04.001 DIMENSIONAL TABLE**  
**3. RESIDENTIAL HIGH DENSITY ZONES**  
**a. Dimensions**

a. Dimensions

Development in the R-W, R-3, R-2, and R-0 zones shall conform to the development standards in Table 50.04.001-11 except as modified below:

TABLE 50.04.001-11: RESIDENTIAL – HIGH DENSITY ZONES DIMENSIONS					
	R-W	R-3	R-2	R-0	Comments/Additional Standards
DENSITY					50.04.001.3.b
Minimum	80% of max. [1]	80% of max. [1]	12 lots <u>or</u> units/acre [2]	20 lots <u>or</u> units/acre [2]	
Maximum (units/acre)	[3]	[3]	--	--	
****					
MAX. LOT COVERAGE					50.04.001.3.d
Lot Coverage	100	50	Table 50.04.001-12	<del>40</del> 55	
****					
MAX. BASE HEIGHT (FT.)					50.01.004.3.f
Flat Lot	--	28	28	28	
Lots with Sloping Topography	--	[4]	[4]	[4]	
Sloped Lot	--	35	35	35	
From <del>the mean water level</del> surface of Oswego Lake <u>Surface Elevation</u>	24/ <u>27</u> [5]	--	--	--	

<u>Accessory Structure</u>		<u>Lesser of 24 or height of roof form of primary structure</u>	<u>Lesser of 24 or height of roof form of primary structure</u>	<u>Lesser of 24 or height of roof form of primary structure</u>	<u>50.04.001.1.f.v</u>
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Density: R-2 and R-0: This is intended to fill a loophole - from a density standpoint, there is no difference between subdivisions and multi-family units.

Lot Coverage: R-0: 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.

Accessory Structure Height: Consistent treatment of accessory structures vis-à-vis primary structures so that each zone has a primary and accessory height limitation, and similar exceptions to height. This amendment (1) establishes a 24' specific height limitation for accessory structures, rather than the zone height limitation also applying to accessory structures. (2) Because there would now be a different height for accessory structures, the general exceptions to height currently applicable to accessory structures are formatted for accessory structures. (3) Height is nevertheless limited to no higher than the roof form of the primary structure.

Zones	Distinction between Primary and Accessory	Single Family Dwelling Height Exceptions	Peak-a-Boo Exceptions for Accessory Structure?
High Density	No	Yes	Yes
R-6	Yes	Yes	No
Low Density	Yes	Yes	No
DD	No	Yes	Yes
West Lake Grove	No	No	No

[1] The number of lots required shall be determined by dividing the net developable square

footageacre by the minimum lot size or per units required in the underlying zone, and multiplying this number by 0.8. The result shall be rounded up for any product with a fraction of 0.5 or greater and rounded down for any product with a fraction of less than 0.5. The requirements of this subsection are subject to the exceptions contained in LOC 50.04.003, Exceptions, Projections, and Encroachments.

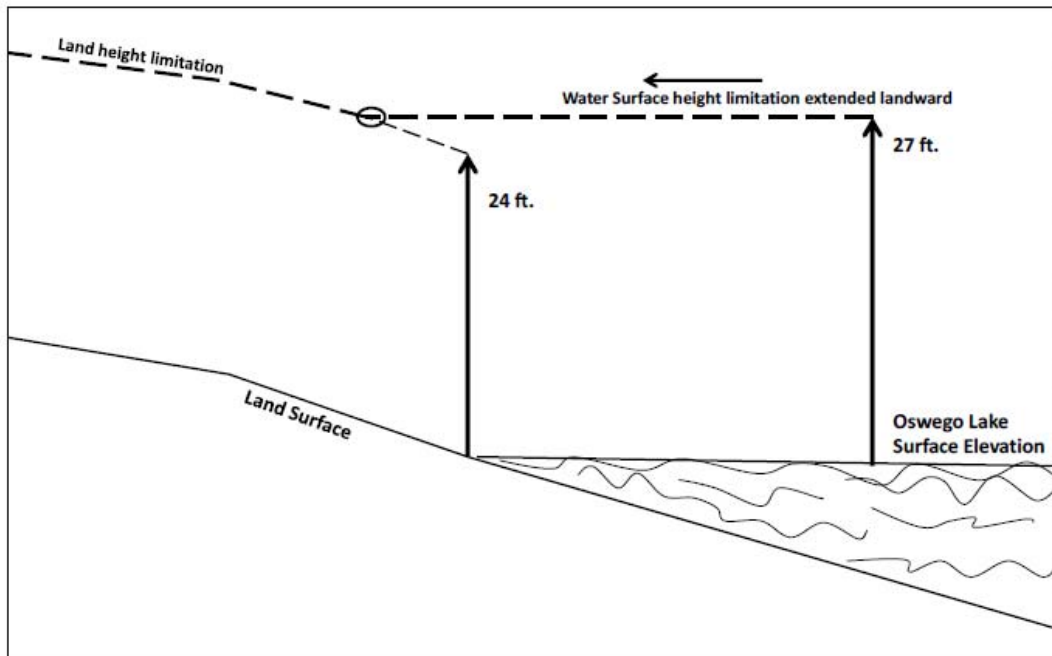
This would be consistent with the R-DD zone (LOC 50.04.001.2.a).

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[5]. For any portion of the lot above the Oswego Lake Surface Elevation, maximum building height shall not exceed 24 ft. For any portion of the lot at or below the Oswego Lake Surface Elevation, maximum building height shall not exceed 27 ft above the Oswego Lake Surface Elevation. The maximum building height of 27 ft above the Oswego Lake Surface Elevation shall extend landward until it meets the 24 ft height limit for the portion of the lot above the Oswego Lake Surface Elevation. See Table 50.04.001-11[5].

Table 50.04.001-11 [5]

Height Measurement for R-W Zoned Lots



This amendment applies the height limitation *when the ground is above the Lake Elevation* at the ground level, rather than at the Lake Elevation; currently the height limitation is based on the Lake Elevation and extended out from the lake, which results in a lessening permitted height, based on the slope of the ground; and (2) increases 24 feet height over the Lake Elevation to 27 feet, to account for the minimum floor level in the Flood Management flood zone.

There are different datum points which are used for purposes of determining elevation in the Lake Oswego area. Although these different datum points result in different numerical representations of elevation, they are the same elevation. Rather than listing the various datum point methods each time the Oswego Lake elevation is stated, this amendment refers to the new definition, for code readability.

**50.04.001 DIMENSIONAL TABLE**  
**3. - RESIDENTIAL HIGH DENSITY ZONES -**  
**e - Yard Setback – Additional Standards**

ii. R-2 Yard Setbacks

TABLE 50.04.001-13: R-2 YARD SETBACKS				
Structure Type	Front (ft.)	Side		Rear
		Exterior	Attached	
Duplex	10	7	0	10
Zero-lot Line	10	7	0	10
Rowhouse	10	7	0	10
Detached Dwelling	20	Single story dwelling: 5 ft.  Multi-story dwelling: 15 feet cumulative, 5 feet minimum on a side [1]		20
Other Primary Structures <del>and all Accessory Structures</del>	10	10	10	

TABLE 50.04.001-13: R-2 YARD SETBACKS				
Structure Type	Front (ft.)	Side		Rear
		Exterior	Attached	
<a href="#">Accessory Structures</a>	<a href="#">Same as for Primary Structure Type</a>	<a href="#">Same as for Primary Structure Type</a>		<a href="#">10 ft.</a>

Previously accessory structures were treated under the “other structures” section of the table. LU 08-0052 added “primary” and “and all Accessory Structures” to make it clear that accessory structures were subject to the “other structures” section until addressed by the Planning Commission in this LU 08-0054. Issue was deferred to LU 08-0054. Planning Commission finds that the default side and front yard setback for accessory structures should be the same as primary structures.

**50.04.001 DIMENSIONAL TABLE**  
**3. RESIDENTIAL HIGH DENSITY ZONES**  
**f. Height – Additional Standards**

i. Projects > 1/2 Acre

(1) On a lot or lots developed as one project of 1/2 acre or greater in total area for the R-0 and R-3 zones, the [primary](#) structure height ~~shall not exceed: may average 40 ft. over the project lot(s) with no individual structure exceeding 50 ft.~~ [shall not exceed: may](#)

<a href="#">No. of primary structures on site</a>	<a href="#">Maximum base height for primary structures</a>
<a href="#">One:</a>	<a href="#">50 ft</a>
<a href="#">Two or more:</a>	<a href="#">40 ft average, with no individual primary structure exceeding 50 ft. base building height.</a>

(2) On a lot or lots being developed as one project of 1/2 acre or greater in total area for the R-2 zone, the [primary](#) structure height ~~may average 32 ft. over the project lot(s) with no individual structure exceeding 35 ft.~~ [shall not exceed:-](#)

<u>No. of primary structures on site</u>	<u>Maximum base height for primary structures</u>
<u>One:</u>	<u>35 ft</u>
<u>Two or more:</u>	<u>32 ft average, with no individual primary structure exceeding 35 ft. base building height</u>

Presently, where only one structure is located on site, it would be limited to the smaller “average” requirement, although if a much smaller accessory structure is added, then the primary structure can go up to the maximum primary structure height. This has the effect of added unneeded, small accessory structures. This historic application, however, has been to allow the highest amount for a single building on a ½ acre or greater site.

Infill’s use of base building height clarifies that the exceptions to maximum building height are in addition to the height adjustments permitted for sites greater than 1/2-acre.

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**iv. Height in the R-W Zone**

~~No structure in the R-W zone can exceed 24 ft. in height. Height is measured from the mean water level surface (elevation 98.6) of the water.~~

The R-W building height (amended) has been incorporated into Table 50.04.001-11, and specifically footnote 5. Therefore this is no longer needed as an “additional” building height standard.

**iv. Exceptions to Base Building Height**

In addition to the maximum structure height determined by subsections (i) – (iii) above, ~~A~~a greater height than otherwise permitted is allowed as follows:

This amendment clarifies that the exceptions for roof form are in addition to the exceptions for project height.

(1) Single-family dwellings – building height, inclusive of projections permitted by the building height exceptions under subsection (2) below, may be increased by

one foot for every five additional feet in yard setback on all sides, beyond the underlying zone code standards provided in LOC 50.04.001.4.f.i and f.ii above; or

This amendment results in consistent treatment of accessory structures vis-à-vis primary structures so that each zone has a primary and accessory height limitation, and similar exceptions to height (except in the WLG zones, where the primary structure does not have single-family exceptions to building height). This amendment (1) establishes a 24' specific height limitation for accessory structures, rather than the zone height limitation also applying to accessory structures. (2) Height is nevertheless limited to no higher than the roof form of the lowest primary structure.

(2) Any primary structure – for roof forms, or architectural features, such as, cupolas or dormers, provided that these roof forms or features:

See comment to subsection TABLES 50.04.001-3 AND -11 above.

(a) Do not extend more than six feet above the maximum specified base height;

(b) Do not, in total, exceed one-third of the width of the building or buildings as measured on any elevation drawing for an individual roof form or projection or do not exceed one-half of the width of the building for two or more separate roof forms or projections; and,

(c) Do not, in total, cover more than 20% of the roof area on which they are located as viewed from directly above for an individual roof form or projection or 30% for multiple roof forms or projections.

## **50. 04.001 DIMENSIONAL TABLE**

### **4. COMMERCIAL, MIXED USE, AND INDUSTRIAL ZONES**

#### **b. West Lake Grove Zones**

##### **i. WLG Town Home Residential (WLG R-2.5)**

##### **i. WLG Town Home Residential (WLG R-2.5)**

###### **1) Site Development Limitations**

Yard Setbacks. The following exterior wall setbacks shall be required in the WLG R-2.5 zone, except as modified by LOC [50.04.003.1](#), Additional Dimensional Exceptions.

TABLE 50.04.001-15: WLG R-2.5 YARD SETBACKS		
Structure Type	Yard Type	Setback Distance
	<u>Abutting Single Family Residential Zone</u>	
<del>Permitted</del> <u>Primary Use</u>	Front (from property line)	10 ft.
	Rear and Side ( <del>abutting a single-family residential zone</del> )	25 ft.
	Rear and Side ( <del>not abutting a single-family residential zone</del> )	10 ft.
<u>Accessory Structures</u>	<u>Front, Rear, and Side</u>	<u>15 ft.</u>
<u>Not Abutting Single Family Residential Zone</u>		
<u>Primary Use</u>	<u>Front</u>	<u>10 ft.</u>
	<u>Rear</u>	<u>10 ft.</u>
	<u>Side – exterior wall</u>	<u>10 ft.</u>
	<u>Side – common wall</u>	<u>0 ft.</u>
<u>Accessory Structures</u>	<u>Front</u>	<u>10 ft.</u>
	<u>Rear and Side</u>	<u>0 ft.</u>

The 10 ft. distance is recommended based on presence of the Front Yard Setback distance of 10 ft. The WLG R-2.5 lots are small. A 0' side and rear setback would allow the residents a more useable backyard, recognizing that the accessory structures could be at the property line of abutting non-residential lots.

The 15' setback for accessory structures abutting residential structures was derived as simultaneously required for the landscaping buffer:

**Section 50.67.020 Standards Applicable to the Entire District.**

**10. Buffer Areas: Adjoining residential land uses shall be buffered and screened from land uses within the Design District as follows:**

- a. Separation by Right-of-Way: Where the boundary of the West Lake Grove Design District is adjacent to a residential zone but separated by a public right of way, buffering requirements shall be met by setback requirements.
- b. Landscape Buffering: There shall be a minimum 15 foot wide landscaped buffer along the entire edge of the West Lake Grove Design District where it abuts a residential zone and along the property boundaries of new



**commercial and town home residential development which abut existing single family dwellings within the Design District.** A buffer area may only be occupied by utilities, screening and landscaping. No buildings, access ways or parking areas shall be allowed in a buffer area except where an access way has been approved by the approval authority. The buffer area is required to be landscaped as follows: ...

(2) Height of Structures

- (i). Primary Structures: The maximum height of any primary structure in the WLG R-2.5 zone shall not exceed 35 ft.
- (ii). Accessory Structures: The height of the roof form of the primary structure or 24 ft., whichever is less.

An accessory structure should be of smaller height than a primary structure. 24' is the maximum height of accessory structures in all other residential zones.

**50. 04.001 DIMENSIONAL TABLE**

**4. COMMERCIAL, MIXED USE, AND INDUSTRIAL ZONES**

**b. West Lake Grove Zone**

**ii. WLG Residential Live/Work Zone (WLG RLW)**

ii. WLG Residential Live/Work Zone (WLG RLW)

(1) Conditions for Commercial Use

- (a) A person who conducts business within the WLG RLW zone must also reside within the same building. No more than one additional employee is allowed.
- (b) The business must be conducted in a specifically delineated area on the first floor of the structure and occupy no more than 700 sq. ft.

(2) Site Development Limitations

(a) Yard Setbacks

The following exterior wall setbacks are required within the WLG RLW zone, except as modified by LOC 50.04.003.1, Additional Dimensional Exceptions.

TABLE 50.04.001-16: WLG RLW YARD SETBACKS		
Structure Type	Yard Type	Setback Distance
<del>Permitted</del> <u>Primary Use</u>	Front (from property line)	10 ft.
	Rear and Side (abutting a single-family residential zone)	25 ft.
	Rear and Side (not abutting a single-family residential zone)	10 ft.
<u>Accessory Structures – Not Abutting Residential Zones</u>	Front	10 ft.
	Rear	0 ft.
	Side	0 ft.
<u>Accessory Structures - Abutting Residential Zones</u>	Front	15 ft.
	Rear	15 ft.
	Side	15 ft.

Applied same suggested setback for accessory structures in the WLG OC/R-2.5 Zone.

The 10 ft. distance is recommended based on presence of the Front Yard Setback distance of 10 ft.

The 15' setback for accessory structures abutting residential structures was derived as simultaneously required for the landscaping buffer:

**Section 50.67.020 Standards Applicable to the Entire District.**

**10. Buffer Areas: Adjoining residential land uses shall be buffered and screened from land uses within the Design District as follows:**

a. Separation by Right-of-Way: Where the boundary of the West Lake Grove Design District is adjacent to a residential zone but separated by a public right of way, buffering requirements shall be met by setback requirements.

b. **Landscape Buffering: There shall be a minimum 15 foot wide landscaped buffer along the entire edge of the West Lake Grove Design District where it abuts a residential zone and along the property boundaries of new commercial and town home residential development which abut existing single family dwellings within the Design District.** A buffer area may only be occupied by utilities, screening and landscaping. No buildings, access ways or parking areas shall be allowed in a buffer area except where an access way has been approved by the approval authority. The buffer area is required to be landscaped as follows: ...

(b) Height of Structures

(i). The maximum height is 35 ft., except that the primary building height may be increased by one ft. for every five additional ft. in yard setback on all sides, beyond the minimum code standards for the zone.

(ii). Accessory Structures: The height of the roof form of the primary structure or 24 ft., whichever is less.

An accessory structure should be a smaller height than a primary structure. 24' is the maximum height of accessory structures in all other residential zones.

**50. 04.001 DIMENSIONAL TABLE**

**4. COMMERCIAL, MIXED USE, AND INDUSTRIAL ZONES**

**b. West Lake Grove Zones**

**iii. WLG Residential Mixed Use (WLG RMU)**

iii. WLG Residential Mixed Use (WLG RMU)

(1) Site Development Limitations

(a) Professional Office Uses and Minor Public Facilities

A single building which provides for Professional Office uses or Minor Public Facilities shall be limited to a total floor area of 8,000 sq. ft. in a multi-story building, with no more than 5,000 sq. ft. on any floor.

(b) Yard Setbacks

The following yard setbacks are required in this zone, except as modified by LOC 50.04.003.1, Additional Dimensional Exceptions.

TABLE 50.04.001-17: WLG RMU YARD SETBACKS			
Structure Type	Yard Type	Setback Distance	Special Setback Distance
Attached Town Homes	Front (from property line)	10 ft.	
	Rear and Side (abutting a single-family residential zone)	25 ft.	
	Rear and Side (not abutting a single-family residential zone)	10 ft.	
Primary Structures (all other)	Setbacks of structures abutting residential zones	25 ft.	Structures shall be set back at least six ft. from the meandering pathway or sidewalk along Boones Ferry Road (see Figure 50.05.005-D, WLG Pedestrian Facilities and Pathways)
	Setbacks of structures not abutting residential zones	0 ft.	
<b>Accessory Structures</b>	<b>Same setbacks as for type of primary structure</b>		
<u>Accessory Structures – Not Abutting Residential Zones</u>	<u>Front</u>	<u>10 ft.</u>	
	<u>Rear</u>	<u>0 ft.</u>	
	<u>Side</u>	<u>0 ft.</u>	
<u>Accessory Structures - Abutting Residential Zones</u>	<u>Front</u>	<u>15 ft</u>	
	<u>Rear</u>	<u>15 ft.</u>	

TABLE 50.04.001-17: WLG RMU YARD SETBACKS			
Structure Type	Yard Type	Setback Distance	Special Setback Distance
	<a href="#">Side</a>	<a href="#">15 ft.</a>	

In LU 08-0052, the Commission temporarily recommended that some front yard setback should be applied to accessory structures in the OC/R-2.5 district, so accessory structures are not located at the sidewalk. The Commission deferred the decision on front yard setbacks until LU 08-0054.

The 10 ft. distance is recommended based on presence of the Attached Townhouse Front Yard Setback distance of 10 ft.

The 15' setback for accessory structures abutting residential structures was derived as simultaneously required for the landscaping buffer:

**Section 50.05.005.4 Standards Applicable to the Entire District.**

**10. Buffer Areas: Adjoining residential land uses shall be buffered and screened from land uses within the Design District as follows:**

a. Separation by Right-of-Way: Where the boundary of the West Lake Grove Design District is adjacent to a residential zone but separated by a public right of way, buffering requirements shall be met by setback requirements.

b. Landscape Buffering: There shall be a minimum 15 foot wide landscaped buffer along the entire edge of the West Lake Grove Design District where it abuts a residential zone and along the property boundaries of new commercial and town home residential development which abut existing single family dwellings within the Design District. A buffer area may only be occupied by utilities, screening and landscaping. No buildings, access ways or parking areas shall be allowed in a buffer area except where an access way has been approved by the approval authority. The buffer area is required to be landscaped as follows: ...

(c) Height of Structures

(i). Primary Structures: 35 ft.

(ii). Accessory Structures: 24 ft., or the height of the roof form of the primary structure, whichever is less.

An accessory structure should be of smaller height than a primary structure. 24' is the maximum height of accessory structures in all other residential zones.

**50. 04.001 DIMENSIONAL TABLE**

**4. COMMERCIAL, MIXED USE, AND INDUSTRIAL ZONES**

**b. West Lake Grove Zones**

**iv. WLG Office Commercial (WLG OC)**

iv. WLG Office Commercial (WLG OC)

(1) Site Development Limitations

(a) Setbacks

Buildings shall be set back at least six ft. from the sidewalk along Boones Ferry Road (See Figure 50.05.005-D, WLG Street Pedestrian Facilities and Pathways). The provisions of LOC 50.04.003.1, Additional Dimensional Exceptions shall not be applied in this zone.

(b) Height of Structures

i. **Primary Structures:** The maximum height of any primary structure shall not exceed 35 ft. The maximum height of the wall plane shall be no greater than 30 ft. measured from grade at the exterior wall of the building to the gutter line.

ii. **Accessory Structures:** The height of the roof form of the primary structure or 24 ft, whichever is less.

An accessory structure should be of smaller height than a primary structure. 24' is the maximum height of accessory structures in all other residential zones.

50.03.002 USE TABLE

3. COMMERCIAL, MIXED-USE, INDUSTRIAL, AND SPECIAL PURPOSE DISTRICTS USE TABLE

TABLE 50.03.002-2: COMMERCIAL, MIXED-USE, INDUSTRIAL & SPECIAL PURPOSE DISTRICTS USE TABLE																	
P = Permitted Use   Blank = Not Permitted   C = Conditional Use																	
[x] Table notes located at the end of the table																	
Use Cat.	Use Type	Commercial, Mixed-Use, Industrial											Special Purpose			Use Specific Standards	
		N C	G C	H C	O C	E C	C R & D	M C	WLG- [32]				I P	C I	P F		P N A
									O C	R M U	R-2.5	R L W					
****																	
COMMERCIAL USES																	
Vehicle/equipment sales and services	Boat sales, <a href="#">boat repair</a> ;																P
	<a href="#">boat storage</a>																P
	****																
Animal and related services	Pet care, daily, fully conducted within building	C	P	P	C	P	C	C									P
Commercial Services	<a href="#">Crematorium</a>																P
	Upholstery shop	P	P			P											P [3]

**TABLE 50.03.002-2: COMMERCIAL, MIXED-USE, INDUSTRIAL & SPECIAL PURPOSE DISTRICTS  
USE TABLE**

P = Permitted Use | Blank = Not Permitted | C = Conditional Use

[x] Table notes located at the end of the table

Use Cat.	Use Type	Commercial, Mixed-Use, Industrial											Special Purpose			Use Specific Standards		
		N C	G C	HC	O C	EC	CR&D	M C	WLG- [32]				I P	I P	Cl		P F	PN A
									O C	RM U	R-2.5	RL W						
Office, Business, or Professional [12]	Offices accessory to <a href="#">any use permitted in the IP zone, excluding offices accessory to Professional Office space</a> <del>manufacturing, warehousing or research uses</del>													P				
Retail Sails	Sign shop		P			P								P	P [3]			
<b>MANUFACTURING</b>																		
	Facilities for the manufacturing, <a href="#">wareho</a>													P				



**TABLE 50.03.002-2: COMMERCIAL, MIXED-USE, INDUSTRIAL & SPECIAL PURPOSE DISTRICTS  
USE TABLE**

P = Permitted Use | Blank = Not Permitted | C = Conditional Use

[x] Table notes located at the end of the table

Use Cat.	Use Type	Commercial, Mixed-Use, Industrial											Special Purpose			Use Specific Standards	
		N C	G C	HC	O C	EC	CR& D	M C	WLG- [32]				I P	C I	P F		P N A
									O C	R M U	R- 2. 5	R L W					
	using, processing or assembling of products																
PUBLIC, INSTITUTIONAL, AND CIVIC USES																	
Health Care Facilities	Ambulance Services	P	P			P							P [ 3 ]				

\*\*\*\*

[3] < 5,000 sq. ft. ~~max~~in floor area, totally enclosed within a building.

[14] Greater than 3,000 sq. ft. in floor area

[15] Less than 5,000 sq. ft. in floor area.

**Offices Accessory:** 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.

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.

Crematoriums are listed as a part of the definition of “cemetery”. But, 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.

Boat Sales: 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.

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.

### **50.03.003 USE-SPECIFIC STANDARDS**

#### **3. CONDITIONAL USE STANDARDS FOR PUBLIC, INSTITUTIONAL, AND CIVIC USES, INCLUDING STANDARDS FOR TELECOMMUNICATIONS FACILITIES**

##### **e. Telecommunications Facilities**

##### e. Telecommunications Facilities

###### i. Purpose

The purpose of this section is to establish design and siting standards for telecommunication facilities that:

(1) Reduce visual impacts of antennas, towers and ancillary facilities through careful design, siting, and vegetative screening;

(2) Avoid damage to adjacent properties from tower failure and falling ice, through engineering and careful siting of tower structures;

(3) Maximize use of any new transmission tower and any existing suitable structures to reduce the need for additional towers; and

(4) Allow transmission towers in residential areas only when necessary to meet functional requirements of the telecommunications industry.

###### ii. Applicability

These standards shall apply to new telecommunication facilities and collocated telecommunication facilities and not pre-existing towers or pre-existing antennae.

iii. Approval Criteria for Collocated Facilities

(1) Site Size

No minimum lot size shall apply when a telecommunications facility is collocated on an existing building or structure. ~~Telecommunications facilities collocated on existing towers or reconstructed existing towers shall not decrease the setback of the existing tower. For the purposes of this section, an increase in tower circumference to accommodate collocated facilities shall not be deemed to decrease setbacks.~~

(2) ~~Suitable~~ Facilities for Collocation

(a) Priorities for Facilities. Collocation shall occur in the following order of ~~suitable~~ facilities:

(i). Facilities where the collocated facility will project not more than 10' higher than the highest point of the existing facility:

- ~~(i)~~ (A) Previously approved telecommunication tower;
- ~~(ii)~~ (B) Existing nonconforming telecommunications tower;
- ~~(iii)~~ (C) Existing buildings ~~suitable for collocation~~; ~~or~~
- ~~(iv)~~ (D) Utility (electric, cable, telephone, etc.) and light poles.

(ii). Facilities where the collocated facility will project more than 10' higher than the highest point of the existing facility:

- (A) Previously approved telecommunication tower.
- (B) Existing non-conforming telecommunication tower.
- (C) Utility (electric, cable, telephone, etc.) and light poles.
- (D) Existing buildings.

The Code currently permits collocation facilities to go up to 20' above the existing facility in commercial, public use, or Public Function Zone. The priority of eligible facilities for collocation is proposed to be changed, so that if the additional

height is more than 10', then poles are preferred over existing buildings. Collocating facilities on buildings affects the building design, and thus should occur as a last resort. This also removes the "suitability" test for existing buildings in the categorization of facilities and moves that into its own subsection (ii) below.

(b) Suitability of Facility for Collocation. To determine the suitability of the existing facility for the proposed collocation facility or structure, ~~The~~ the applicant ~~shall~~ must show that:

(i). ~~there~~ There are no reasonably feasible telecommunication facilities in a higher classification under subsection (a) above that can meet the requirements of this subsection for a collocated facility and provide the necessary telecommunication service.

(ii). The addition of the antenna equipment will not interfere with the normal operation of utilities or existing transmission facilities and the collocated facility complies with the height limit in subsection (iii)(3) below;

All of the prior "suitability" standards are combined into one subsection.

(iii). The collocation improvements must satisfy the standards for the underlying zone, except as provided by subsection (iii)(3) below;

All of the prior "suitability" standards are combined into one subsection.

(iv). The existing structure, if structurally enhanced in order to permit collocation, does not result in a decrease of the setback of the reconstructed structure as described in subsection (iii)(1) above and the height of the reconstructed facility complies with height limit contained in subsection (iii)(3) below as applied to the existing structure prior to replacement or reconstruction; and

All of the prior "suitability" standards are combined into one subsection.

(v). The collocation may not involve the removal of any previously approved landscaping/buffering.

All of the prior "suitability" standards are combined into one subsection.

~~for collocation within the necessary service area to be approved for a collocated telecommunication facility lesser classification subject to compliance with the following:~~

~~\_\_\_\_\_ A. \_\_\_\_\_ No increase in the height of the existing telecommunication support structure is proposed;~~

~~\_\_\_\_\_ B. \_\_\_\_\_ The proposed collocated antenna is no more than 20 feet higher than the existing tower and antenna;~~

~~\_\_\_\_\_ C. \_\_\_\_\_ The collocation improvements must satisfy the standards for the underlying zone; and~~

~~\_\_\_\_\_ D. \_\_\_\_\_ The collocation may not involve the removal of any previously approved landscaping/buffering.~~

~~\_\_\_\_\_ v. \_\_\_\_\_ Towers or attachments may be placed on existing structures such as athletic field light poles, utility poles, utility towers and tall buildings provided that the addition of the antenna equipment will not interfere with the normal operation of utilities or existing transmission facilities and the collocated facility complies with the height limit in subsection (3)(c) of this section.~~

~~\_\_\_\_\_ vi. \_\_\_\_\_ Existing structures may be structurally enhanced when necessary to permit collocation as long as the setback of the reconstructed structure is not decreased as described in subsection (3)(a) of this section and as long as the height of the reconstructed facility complies with height limit contained in subsection (3)(c) of this section as applied to the existing structure prior to replacement or reconstruction.~~

### (3) Height Limit

Collocated facilities are exempt from the height limits of the underlying zone, but shall be no more than ten ft. taller than the existing structure in a residential zone, a mixed residential/commercial zone, or Public Functions Zone, or no more than 20 ft. taller than the existing structure in a commercial, public use, or industrial zone.

Exceptions: A collocated facility shall be no taller than the existing facility where the height of the existing facility has previously been increased in excess of the height limit of the underlying zone as a result of approval of a prior collocation application pursuant to this section.

Grammatical correction: There is only one exception, so singular term is appropriate.

#### (4) Visual Impact

(a) All ancillary facilities shall be screened, hidden or disguised.

(b) Antennae shall be screened, hidden or disguised, or shall be painted or colored to blend into the structure or surroundings.

#### (5) Processed as New Facility

A proposed collocated facility that does not comply with ~~subsection (3) of this section~~ [the approval criteria for collocated facilities](#) shall be processed as a new facility.

The reference to specific sections [LOC 50.03.003.e.iii(1) and 50.03.003.e.iii(2)(b)] can be state simply, since the criteria for collocated facilities has that title. Staff also recognizes that it is a truism.

#### iv. Approval Criteria for New Facilities

##### (1) Site Size

A new facility shall be sited on a parcel of a size and shape that complies with the following criteria:

##### (a) Setbacks - [Tower](#)

The tower footprint shall be set back at least two-thirds the tower height from any property line. This setback may be reduced if the applicant can demonstrate that:

(i) The shape or configuration of the parcel prevents compliance with the setback standard or that a reduction in setback is necessary to take advantage of screening opportunities (such as tall trees, tree groves, buildings, or other tall elements) not available within the required setback area;

(ii) The reduction in setback is the minimum required to best camouflage the facility;

(iii) Adequate clearance between the facility and property line can be provided to accommodate landscaping and fencing; and

(iv) The reduction in setback will not cause a greater visual impact to adjacent uses.

(b) Setbacks – Ancillary Facilities.

Ancillary facilities shall be setback the same as required for primary structures of the zone, except that the side or rear yard setback may be reduced in a residential zone if the ancillary facilities meet the criteria in LOC 50.03.004.2.b.

Ancillary facilities consist of the equipment related to the operation of the tower, and are usually found in a small shed in proximity to the tower. This amendment would allow the structure to be located the same as if the shed were accessory to the primary use, e.g., in the reduced side and rear setbacks.

(bc) The tower pad shall be sited in a location that permits additional expansion to accommodate future collocated ancillary facilities. The tower shall be located centrally on this pad. This standard shall not apply to antennae attached to existing structures or towers located on rooftops.

(de) A licensed structural engineer’s analysis shall be submitted to demonstrate that the potential impact of tower failure and ice falling from the tower will be accommodated on site.

(de) Separation from Pre-Existing Towers

New towers shall be separated from existing towers by at least the following distances, measured in a straight line from the base of the proposed new tower to the base of any pre-existing tower:

TABLE 50.03.003-1: SEPERATION FROM PRE-EXISTING TOWERS				
	Lattice (ft.)	Guyed (ft.)	Monopole ≥ 80 ft. in height (ft.)	Monopole ≤ 80 ft. in height (ft.)
Lattice	5,000	5,000	1,500	750
Guyed	5,000	5,000	1,500	750
Monopole ≥ 80 ft. in height	1,500	1,500	1,500	750
Monopole ≤ 80 ft. in height	750	750	750	750

(2) Collocation to be Explored; Accommodated

\*\*\*\*

(c) Multiple Attachments on Utility Towers

In conformance with the Telecommunication Act of 1996, Section 703, a utility shall provide any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right of way owned or controlled by it, unless there is insufficient capacity or access cannot be granted for reasons of safety, reliability, and generally applicable engineering purposes.

(d). Ancillary facilities for collocated facilities shall be setback the same as required for primary structures of the zone, except that the side or rear yard setback may be reduced in a residential zone if the ancillary facilities meet the criteria in LOC 50.03.004.2.b.

Ancillary facilities consist of the equipment related to the operation of the tower, and are usually found in a small shed in proximity to the tower. This amendment would allow the structure to be located the same as if the shed were accessory to the primary use, e.g., in the reduced side and rear setbacks.

\*\*\*\*

**50.03.004 ACCESSORY STRUCTURES AND USES**

**1. ACCESSORY USES**

1. ACCESSORY USES

\*\*\*\*

c. 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 sq. ft.~~

The performance requirements are also found in the definition, so they can be deleted here.

**50.03.004 ACCESSORY STRUCTURES AND USES**

**2. ACCESSORY STRUCTURES**

**a. Structure Specific Regulations**

a. Structure Specific Regulations



- i. Pool covers shall not exceed 15 ft. in height.
- ii. "Dish" type antenna may only be placed in rear yards, on the ground, and must be screened by landscaping.
- iii. Except as provided in LOC 50.05.010, Sensitive Lands Overlay District, boat houses and docks along Oswego Lake and its canals may be placed on a property line.

iv. Heat pumps, or similar mechanical equipment shall meet the required setbacks of the zone, except as provided under subsection (b)(i) 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 (b)(i)[A rear yard setback may be reduced to three ft. and a side yard may be reduced to five ft. for an accessory structure]. This is consistent with current practice.

## 50.03.004 ACCESSORY STRUCTURES AND USES

### 2. ACCESSORY STRUCTURES

#### b. Setback Reduction for Accessory Structures

b. ~~Setback~~ 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.

i. Regular Lot. On a non-flag lot, A rear yard setback may be reduced to three ft. and a side yard may be reduced to five ft. for an accessory structure in a residential zone if the structure complies with the following ~~four~~ criteria:

(1) The accessory structure is erected more than 40 ft. 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 three ft. or to the degree the garage maintains access that provides an outside front wheel turning radius of at least 25 ft., whichever is greater.

(2) For an accessory structure less than four feet in height, The the accessory structure is detached from other buildings by ~~five~~ three ft. 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 4 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 proposed the change that would exempt mechanical equipment under a certain size (height, width and depth) from the separation requirement, while still meeting all the other criteria under 50.14.005(5).

The separation distance between accessory and primary structures is changed from 5 to 3 ft., to meet the same separation distance for "detached" structures.

(3) The accessory structure does not exceed a height of ten ft. nor an area of 600 sq. ft. [footprint](#).

"Footprint" was used here, rather than floor area, because not all accessory structures have "floor area", i.e., mechanical equipment, pumps, etc.

~~(4) The parcel is zoned other than R-6.~~

This is moved to the Exception section below.

[ii. Flag Lots. A side or rear yard setback may be reduced to six ft. on a flag lot when the above criteria in subsection \(i\)\(1-3\) are met.](#)

Without this provision, then the 3' or 5' exception would be possible.

iii. The setback exception authorized by ~~this~~ subsection (i) or (ii) does not apply to:

- (1). ~~setbacks~~ Setbacks required by LOC 50.04.002, Special Street 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). Lot is zoned R-6.

This subsection was moved from (i)(4) above.

(4). Accessory structures used as secondary dwelling units.

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.

### ~~iii. 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 six ft. on a flag lot when the above criteria in LOC 50.03.004.2.b.i(1-4) are met.~~

## 50.04.002 SPECIAL STREET SETBACKS

### 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

~~A "special street setback reference line" is hereby established for the streets identified in LOC 50.04.002.5 below. On these streets, required yards shall be measured from the special street setback reference line. The City Engineer establishes the centerline from which the Special Street Setback Reference Line is measured, pursuant to LOC 42.03.135.~~

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 5 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. SPECIAL STREET SETBACK LIST

The special street setbacks set forth in Table 50.04.002-1 shall not be reduced.

TABLE 50.04.002-1: SPECIAL STREET SETBACKS			
Affected Streets	From	To	Special Setback
Bangy Rd.	South of Alyssa Terrace		30 ft.
Bergis Rd.	Cornell St.	Stafford Rd.	30 ft.
Bergis Rd.	Cornell St.	Skylands Rd.	25 ft.
Boones Ferry Rd.	Mercantile Dr.	West Sunset Dr.	50 ft., <del>but will be superseded by the City Council's adoption of a corridor study.</del>
Bonita Rd.			30 ft.
Bryant Rd.	Boones Ferry Rd.	Lake View Blvd.	40 ft.

TABLE 50.04.002-1: SPECIAL STREET SETBACKS			
Affected Streets	From	To	Special Setback
Bryant Rd.	Lake View Blvd.	Childs Rd.	30 ft.
Burma Rd.			25 ft.
"C" Ave.	State St. alley	Country Club Rd.	30 ft.
<del>Carman Drive</del>		<del>North and east of Kruse Way</del>	<del>30 ft.</del>
Carman Drive		South and west of Kruse Way	40 ft.
Cornell St.	Larch St.	Bergis Rd.	30 ft.
Egan Way	East/west leg only		20 ft.
Fielding Rd.			20 ft.
Firwood Road			30 ft. between Boones Ferry Rd. and Waluga Dr.; 20 ft. west of Waluga Dr.
Gassner Ln.			20 ft.
Inverurie Rd.	North of Washington Ct.		20 ft.
Knaus Rd. <del>from</del>	<del>County Club Rd.</del>	<del>North City Limits</del>	30 ft.
Lake Grove Ave.			20 ft.
Lake View Blvd.	Bryant Rd.	Iron Mt. Blvd.	25 ft., except between South Shore Blvd. and Summit Ct.
Lamont Way			20 ft.
Lanewood St.		Through south leg of Douglas Circle	20 ft.
Laurel St.	Dyer St.	Hallinan St.	30 ft.
Lower Dr.			<del>20</del> 25 ft.
McVey Ave.	State St.	South Shore Blvd.	40 ft.
Madrona St.	<del>Boones Ferry</del>	<del>Bryant Rd. (south from railroad right-</del>	<del>50</del> 25 ft.

TABLE 50.04.002-1: SPECIAL STREET SETBACKS			
Affected Streets	From	To	Special Setback
		<del>of-way)</del>	
North Shore Rd.	Abutting the railroad right-of-way		30 ft. measured from the south line of the railroad right-of-way
Oakridge Rd.	Quarry Rd.	Bonaire Ave.	25 ft.
Oakridge Rd.	Quarry Rd.	Boones Ferry Rd.	30 ft.
Overlook Dr.			30 ft.
Pilkington Road	South of Rosewood St.		Special street setback line shall be measured 30 ft. from the east line of Rosewood Plat.
Quarry Rd.	Boones Ferry Rd.	Galewood St. and extension to Carman Dr.	30 ft.
Reese Rd.	Boones Ferry Rd.	Upper Dr.	30 ft.
Rosewood St.	Pilkington Rd.	Tualatin St.	25 ft.
South Shore Blvd.			40 ft.
Stafford Rd.	<del>South Shore Blvd.</del>	<del>south City limits</del>	40 ft.
State Street			50 ft.
Summit Dr.	Lake View Blvd.	Ridgewood Rd.	20 ft.
Sunset Dr.			20 ft.
Tualatin St.			20 ft.
Twin Fir Rd.	Boones Ferry Rd.	Upper Dr.	30 ft.
Upper Dr.	<del>Iron Mt. Blvd.</del>	<del>City limits</del>	25 ft.
Waluga Dr.	South of <del>Firwood</del> <u>Oakridge Rd.</u>	<u>North of Madrona St.</u>	20 ft.
West Sunset	West of <u>West</u> Lake		20 ft.

TABLE 50.04.002-1: SPECIAL STREET SETBACKS			
Affected Streets	From	To	Special Setback
Dr.	Grove Design District Boundary		

Changes to specific streets are explained below:

- Boones Ferry Road: There is no corridor study pending. This section will soon be amended by the Boones Ferry Road right-of-way refinement study that is currently underway. When the specific Boones Ferry Road refinement requirements are known on a ROW-specific basis, a map for any special street setback will be adopted.
- 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 Madrona. 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."

**50.04.003 EXCEPTIONS, PROJECTIONS, AND ENCROACHMENTS**

**5. ONE YEAR EXCEPTION TO HEIGHT/SETBACK/LOT COVERAGE REQUIREMENTS FOR NEW SUBDIVISION LOTS**

~~5. 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.~~

PC Consensus (4-0): 9/11 after thorough discussion, the consensus was to concur with staff recommendation.

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.



## 50.04.003 EXCEPTIONS, PROJECTIONS, AND ENCROACHMENTS

### 8. GENERAL EXCEPTIONS FOR BUILDING PROJECTIONS, DECKS, AND WALKWAYS AND PATHWAYS TO SETBACKS

#### 8. GENERAL EXCEPTIONS FOR BUILDING PROJECTIONS, DECKS, AND WALKWAYS AND PATHWAYS TO SETBACKS

##### a. Projections from Buildings

Cornices, eaves, gutters, [bay windows located on the ground floor \(but not more than six ft. wide, with a maximum of two bay windows per building elevation\), decorative metal balconies \(but not more than six ft. in length\), flower boxes](#), belt courses, leaders, sills, pilasters, lintels, ornamental features, and other similar architectural features may project not more than two ft. into a required yard [\(as adjusted by LOC 50.04.003.3.a\)](#) or into required open space as established by [lot](#) coverage standards. Canopies, sunshades, chimneys, and flues may project not more than two ft. into a required yard or into required open space as established by coverage standards, but in no event may the projection be within five ft. of a side lot line.

This amendment clarifies that the projections can go into the zone-established yard or as that yard setback is adjusted by LOC 50.04.003.3.a (front setback averaging). Projections into a yard based on variance or RID are under the variance / RID dimension request.

##### b. Patios and Decks

Patios and decks on or above grade, but no more than 30 in. above grade, may project into a required yard, but may not be closer than three ft. to any property line. Patios and decks above 30 in. 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.

##### c. Access Walkways and Pathways, [Driveway Bridges, Trams and Staircase](#)

i. 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.

ii. 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.

iii. 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.

d. Equipment for public service, e.g., utility meters, transformers, telephone switching equipment (but excluding such structures as pump houses) are permitted in a required yard provided the service provider can show that another location or undergrounding of equipment is not possible.

See Staff Supplemental Memo #5, dated 4/2/12, page 5

#### **50.05.004 DOWNTOWN REDEVELOPMENT DESIGN DISTRICT**

#### **8. LANDSCAPING AND SITE DESIGN REQUIREMENTS**

#### **8. LANDSCAPING AND SITE DESIGN REQUIREMENTS**

~~—All developments subject to this Article shall comply with the following landscape and site design requirements.~~

a. Purpose. Landscaping shall be designed to enhance building design, enhance public views and spaces, define the street, provide buffers (screening) and transitions, and provide for a balance between shade and solar access.

b. Amount of Landscaping Required.

i. Landscaping on the site, visible from the ground, shall comply with the following amounts:

(1). Residential and Live/Work: 15% of the lot

(2) Non-Residential development: 10% of the lot.

ii. Vines on espaliers shall be placed along at least one building wall.

Currently landscaping requirements in the Downtown Redevelopment Design District are under the general landscaping requirements of LOC 50.06.004 SITE DESIGN. This standard requires, as applied to the downtown area:

- Commercial and institutional to provide a minimum of 15% of gross land area in landscaping and/or open space visible from off-site,
  - Major public facilities and multi-family developments to provide 20% of gross land area in landscaping in addition to the park and open space requirements.
- For the urban downtown area, this has been found not to be consistent with the Downtown Urban Design Objectives, and virtually all development has received an exception.

This amendment lessens the amount of landscaping required for downtown development.

iii. In addition to the landscaping required in subsection ii above, landscaping for screening and buffering shall be required:

- (1) To screen public or private utility and storage areas and parking lots.
- (2) As a separation between dissimilar uses.

This section is brought over from LOC 50.06.004.1.b.iv.(1)'s general buffer and screening requirements which have been previously applied to the downtown area. With this section now superseding the general landscaping requirement, this continues the screening and buffering requirement, except for (1)(a): "To mitigate noise, lighting or other impacts from dissimilar uses." Landscaping in the downtown area is not needed to mitigate lighting, subsection (ii) already requires screening between dissimilar uses, and landscaping is not really effective against noise.

This amendment assures that the District's landscaping requirement on the site is not used to meet any specific landscape buffering requirement due to dissimilar uses (LOC 50.47). Otherwise, all of the landscaping on the site could be concentrated in along the lot line that abuts dissimilar uses and no other landscaping is applied throughout the site.

c. Style and Design.

- i. Landscaping shall be coordinated with the building design so that landscaping compliments the building design. Landscape design shall incorporate elements such as iron/steel plant balconies, metal fences, railing and gates, masonry walls, window boxes, hanging plant brackets and other similar features that compliment the character of the building design.
- ii. Landscaping may be placed in pots, raised planters, or flower boxes.
- iii. Courtyards visible from the street or sidewalk shall be used to break up the scale and proportion of structures. (See LOC 50.05.004.6 Building Design.) Courtyards shall contain landscaping or features that compliments the design of the building and the surrounding structures and landscaping. Courtyard amenities, including

art or fountains, may be required as part of the design by the reviewing authority.

iv. Landscaping design shall be compatible with abutting or adjacent properties and shall consider the relationship of plantings, site furnishings and materials on those properties and the proposed site.

d. Street Trees. Street trees shall be planted in conformance with the Street Tree List in the Lake Oswego Plant List, and City/LORA specifications for spacing, planting, root barriers, irrigation, lighting (uplighting and holiday lighting), etc.

e. Ground Floor Residential Use. Residential uses at the ground floor shall be separated from sidewalks by a landscaped buffer (see LOC 50.05.004.6.d). The landscape buffer may include stairs, railings, walls, pilaster columns or other similar features.

f. Green Landscaping.

i. Landscape Design shall incorporate the following environmental-friendly design and planting concepts to the maximum degree possible:

(1). Utilize plant materials that are best suited for the areas of the site, e.g. water, soil, sun and shade

(2). Use plant materials, soils, and soil amendments which minimize the use of fertilizers, particularly ones containing phosphate.

(3). Use drought tolerant plants, when possible, to minimize water usage.

(4). Incorporate native plantings and utilize plant materials which are grown in the Pacific Northwest.

(5). Use plant materials that are pest and disease resistant to minimize or avoid the use of pesticides and fungicides.

(6). Irrigation shall use methods and watering schedules which minimize water consumption. These may include drip, micro-spray or bubbler emitters for trees and shrub beds. Irrigation systems shall be designed with solar powered controllers when practicable.

(7). Design tree and vine placement to provide shade on ground and wall surfaces during warm months.

ii. The landscape plans shall include instructions for the continued maintenance of the landscaping, which shall include the following:

(1). When necessary, utilize soil amendments and soil mulches to preserve moisture content.

(2). Irrigation shall avoid systems which throw water into the air especially during high wind or high temperature periods. Watering should occur between 6 PM and 9 AM.

(3). Plant during seasons when plants will be less stressed and requires less initial watering.

(4). Plant trees "bare root" when possible.

(5). When possible, plant turf by seed (not sod), to promote deep root development which will make the turf more drought tolerant.

**ag. Street Furniture and Lighting \*\*\*\***

~~b. Street Trees.~~

~~Street trees shall be required to be installed in compliance with the Downtown Street Tree Plan as a condition of approval.~~

~~eh. Brick Paving \*\*\*\*~~

~~ej. Walls \*\*\*\*~~

~~ej. Gates and Hangers \*\*\*\*~~

~~fk. Hanging Baskets \*\*\*\*~~

~~gl. Art \*\*\*\*~~

~~hm. Protecting Pedestrians \*\*\*\*~~

~~i. Landscape Design~~

~~i. Where new or substantially remodeled buildings are set back from property lines and sidewalks, intervening landscaping shall be designed to invite the public in, not to provide separation.~~

~~ii. Where non-pedestrian space is placed between a building and a sidewalk, benches, low-sitting walls or other street furniture shall be placed in order to enliven the sidewalk.~~

~~iii. Small areas of landscaping and paving in courtyards, entryways, building nooks and other areas shall use materials and designs similar to adjacent public spaces where such use will make the area appear larger or more inviting. This requirement is intended to minimize the transition from public to private space, but is not intended to restrict changes in material where it is functionally necessary or where it will avoid visual monotony.~~

~~iv. Drinking fountains, display windows or other street furniture shall be located in stopping areas created outside of pedestrian circulation areas. Stopping areas may be created by an enclosure, a change in grade, or a change in paving materials (See Figure 50.05.004-H: Street Furniture and Lighting).~~

Moved up to subsection c.

~~jn. Undergrounding of Utilities. Overhead utilities shall be placed underground, unless the City Engineer determines that undergrounding is not practical based upon site conditions in conjunction with the construction of a new building.~~

This amendment would expand its applicability to substantially remodeled buildings, but allows the City Engineer to exempt this requirement when not practical.

## 50.05.009 GREENWAY MANAGEMENT OVERLAY DISTRICT

### 2. DEVELOPMENT REVIEW

#### Subsection b.

b. In reviewing applications [for development](#) in the GM Overlay [District](#), in addition to the requirements of LOC [50.07](#), Review and Approval Procedures, [and except as provided in subsection \(c\) below](#), the ~~Development Review Commission~~ reviewing authority shall ~~consider the following objectives and shall make findings as applicable~~ [determine that the following criteria are met:](#)

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 "subsection (c)" is to provide a balancing test criterion, if not all of the factors in this subsection (b) can be met, akin to the RC Protection Area determination process.
4. "Reviewing authority" is used rather than a specific reference to the Development Review Commission, to allow for staff review as a minor development, subject to appeal to the DRC. In lesser developments, i.e., dead tree removal with mitigation, could be reviewed by staff and is not likely to be appealed to the DRC.
5. This amendment clarifies that the "considerations" are applied as criteria, in conformance with historical interpretation.

i. Significant fish and wildlife habitats will be protected.

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

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

iv. 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.

v. 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. Areas subject to the 100 year flood level are also regulated by the Flood Plain Standard.

vi. 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.

vii. 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.

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”.

viii. ~~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.

Subsection (viii) 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 conflicts on the land and adjacent properties.

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

Goal 15 Willamette Greenway requires plans and implementing measures to “provide for the maintenance of public safety and protection of public and private property, especially from vandalism and trespass in both rural and urban areas to the maximum extent practicable.” However, when reviewing a development proposal, the focus should be that the proposed development *maintain* the existing level of public safety and protection of public and private property, not that the development create an additional level of public safety. This is in accord with the “mitigate negative impacts” requirement under Dolan and the conditioning authority in LOC 50.07.003.5.

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

Semi-colon corrected to be a colon

(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.

(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.

(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.

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.

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

Subsection (xi) is eliminated because, in terms of approving permitted development within the District, it should not a criteria for denial / approval. Goal 15 Willamette Greenway requires a “plans and implementing measures” to provide for “adequate access to the river shall be provided for, with emphasis on urban and urbanizable areas.” This is really addressed through city plans for the area, rather than specific development applications. Of course, if public access is needed to mitigate the adverse impacts of a particular development and meets the Dolan requirements, that can be obtained through the conditioning authority in LOC 50.07.003.5.

(c) It is recognized that all of the criteria listed in subsection (b) 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.

## **50.05.009 GREENWAY MANAGEMENT OVERLAY DISTRICT**

### **3. PERMITTED USES**

### **3. PERMITTED USES**

The following uses are permitted within the GM District.

~~a. 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.

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

c. 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 to be a use within the overlay district, even if they are beyond those that are designated in the Comprehensive Plan. Review of the uses would be in the manner required by LOC 50.05.009(2).

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

e. ~~The cutting of trees~~ Tree removal for public safety, erosion control, or personal non-commercial use, ~~subject to the LOC 50.07, Review and Approval Procedures and LOC Chapter 55, Tree Code.~~

This amendment uses the term “tree removal” from LOC Chapter 55, to result in a consistent scope of applicability between LOC 50.05.009 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 50.07.003.14(22).

~~f. 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 50.07.003(12).

~~g. 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 50.07.003(12).

~~hf. 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 50.05.009.2.a.

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 50.05.009, to assure compatibility with the Greenway Management Overlay District.

ig. 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.

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

“Accessory structures” is added for conformity with other zones.

## 50.05.010 SENSITIVE LANDS OVERLAY DISTRICTS

### 5. STANDARDS APPLICABLE TO RC DISTRICTS

#### c. RC District Development Standards

##### iii. Development Standards

##### iii. Development Standards

If the proposed types of development are permitted within the RC District, the development activity, use or activity shall comply with the following standards, and the Construction Standards set forth in LOC 50.05.010.4.d:

#### **(1) Streets, Driveways, Lake Trams, and Public Transportation Facilities**

\*\*\*\*

(b) Public or private streets, trams to access Oswego Lake, and public transportation facilities shall be set back at least five ft. from, and shall not be placed in or through an RCPA unless:

\*\*\*\*

(iv) For regional, community connector, or local access trails (designated ~~as a regional trail~~ on the City’s Trails and Pathway Master Plan), they may be located within an RCPA provided the trail width shall be no greater than 12 feet wide (as determined by the standards in the City’s Trails and Pathway Master Plan),

There is an omission of the exclusion of trails from this reference to public transportation facilities, as there is specific development criterion for regional trails in subsection D below.

**50.05.010 SENSITIVE LANDS OVERLAY DISTRICTS**

**6. STANDARDS APPLICABLE TO RP DISTRICTS**

**c. RP District Development Standards**

**(d) Streets, Driveways, Lake Trams and Public Transportation Facilities**

(d) Streets, Driveways, Lake Trams and Public Transportation Facilities

\*\*\*\*

(iv) Public streets and public transportation facilities shall not be placed in or through an RP District unless:

\*\*\*

(B) For public transportation facilities (other than regional trails), there is no other suitable location nearby for siting the public transportation facilities which would provide equal or greater public use of the public transportation facilities.

(iv) For regional, community connector trails, or local access trails (designated ~~as a regional trail~~ on the City's Trails and Pathway Master Plan), they may be located within an RCPA provided the trail width shall be no greater than 12 feet wide (as determined by the standards in the City's Trails and Pathway Master Plan),

With the inclusion of community connector trails and local access trails, rather than reciting the maximum trail/pathway in the CDC, reference would be to the standards in the City's Trails and Pathway Master Plan.

**50.06.001 BUILDING DESIGN**

**5. COMMERCIAL, INDUSTRIAL, AND MULTI-FAMILY DEVELOPMENT AND MINOR DEVELOPMENT IN THE R-DD ZONE STANDARDS FOR APPROVAL**

**b. Design Standards**

b. Design Standards

\*\*\*\*

~~ix. Every attempt shall be made to design and locate buildings to provide access to desirable views, while not blocking the views of others unnecessarily (density reduction not required).~~

Although currently in code, staff has not been applying this standard, and believes that it is extremely difficult to administer "desirable views" and not "unnecessarily blocking views".

**50.06.002 PARKING**

**2. STANDARDS FOR APPROVAL**

**a. Vehicle Parking**

a. Vehicle Parking

i. 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.

**ii. Number of Required Parking Spaces.**

The number of required parking spaces under this Article shall be determined by either the Numerical Method [subsection (1)] or the Parking Study method [subsection (2)] below.

**(1) Numerical Method.**

Refer to Tables 50.06.002-1, -50.06.002-2, and 50.06.002-3 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 (v)(1) below and Table 50.06.002-3~~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.

//

<b><u>Table 50.06.002-1: Numerical Method of Determining Minimum Parking Spaces Required</u></b>	
<u>Determine:</u>	<u>Method of Determining:</u>
<u>Floor Area Amount</u>	<u>From Table 50.06.002-2, determine if floor area is used to calculate the number of parking spaces required for the use(s). (Floor Area per Parking Space)</u>
<u>Number of Employees</u>	<u>Determine number of full-time, temporary, part-time and contract employees, or independent contractors, if employee count is used in Table 50.06.002-2 to calculate the number of parking spaces required. (Employee Per Space amount)</u>
<u>Gross Parking Requirement</u>	<u>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.</u>
<u>Reductions</u>	<u>1. See Table 50.06.002-3 for possible reductions. 2. Apply reduction percentages to Gross Parking Requirement.</u>
<u>Mixed Uses</u>	<u>The total requirements for mixed uses on a site shall be the sum for the various uses computed separately.</u>
<u>Rounding</u>	<u>Any fractional space amount determined following the application of Reductions and Mixed Uses above shall be rounded up to the next highest whole space.</u>
<u>Minimum Parking Requirement</u>	<u>The minimum parking requirement is the “rounded” number above.</u>

This “methodology table” is added for clarification of the method of determining the required parking spaces, as well as clarifying what “employees” means for parking calculations.

**(2). Parking Study Method.** Use the parking study methodology for determining the parking needs of the proposed use as provided in subsection (vi) below.

~~(2)~~ Except for residential parking requirements, the maximum number of parking spaces shall not exceed the number of parking spaces required under Table 50.06.002-2, or 125% of the minimum number of required spaces calculated pursuant to Numerical Method or Parking Study Method above, whichever is greater.

This amendment clarifies that the “maximum number” is either per Table 50.06.002-2, or 125% of Table 50.06.002-2 less the reductions in Table 50.06.002-3.

(34) Handicapped parking and ramps shall be provided in accordance with the Uniform Building Code.

~~(4) 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.~~

Moved to the Numerical Method table.

(5). When Use Not Expressly Listed. When the proposed use is not expressly listed within Table 50.06.002-2, 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, pursuant to Table 50.06.002-2(H). 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.

(a). 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 business or development use(s). “Peak parking demand” means the maximum number of parking required during the hours for the normal use of the development or business. The parking study shall be conducted by a registered traffic engineer.

Former City Traffic Engineer Massoud Saberian advises that (1) traffic “engineers” do include in parking studies determination of 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).

(b). 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.

(c). 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 (v)(1) below or Table 50.06.002-3.

TABLE 50.06.002- <del>12</del> : MINIMUM OFF-STREET PARKING SPACE REQUIREMENTS	
Type of Use	Parking Space Required
<b>(A) RESIDENTIAL</b>	
1. Single-family dwelling and duplex	1 space per dwelling unit
2. Secondary dwelling unit	1 space per unit (in addition to 1 space required for main dwelling unit)
3. Multi-family	25% of the required parking for multi-family use shall be located to provide for common or visitor use
i. Studio/Efficiency	1 space per unit
ii. 1 Bedroom	1.25 spaces per unit
iii. 2 or more Bedrooms	1.5 spaces per unit
4. Rooming and boarding house; Bed and Breakfast	1 space per each guest room plus one for owner
<b>(B) COMMERCIAL RESIDENTIAL</b>	
1. Hotel or Motel	1 space per unit
2. Assisted living facility	0.5 space per unit plus one per three employees
3. Hospital	1.5 spaces per bed

**TABLE 50.06.002-12: MINIMUM OFF-STREET PARKING SPACE REQUIREMENTS**

Type of Use	Parking Space Required
<b>(C) PLACES OF PUBLIC ASSEMBLY</b>	
1. Churches, clubs, lodges, meeting rooms, and auditoria	1 space per 4 seats of maximum capacity, or 1 space per each 5 occupants based on maximum capacity as calculated under the provisions of the Uniform building Code
2. Library, reading room, museum, art gallery	1.88 spaces per 1,000 sq. ft. plus one space per 2 employees on the peak shift
3. Nursery, day or child care facility, kindergarten	2.5 spaces per 1,000 sq. ft. G.F.A
4. Elementary or middle school or equivalent private or parochial school	16.6 spaces per 1,000 sq. ft. G.F.A in the auditorium or 2 spaces per classroom, whichever is greater
5. Senior high and equivalent private or parochial school	0.2 spaces per number of students and staff
6. College; commercial school for adults	3 spaces per 1,000 sq. ft. G.F.A (excluding dorms)
<del>7. Schools such as martial arts, music, dance, gymnastics</del>	<del>1 space per 100 sq. ft. of G.F.A of lesson activity floor area plus 0.5 space per employee</del>
<b>(D) COMMERCIAL AMUSEMENTS</b>	
***	
<b>(E) COMMERCIAL</b>	
1. Office, including business and management services except medical or dental	3.33 spaces per 1,000 sq. ft. G.F.A
2. Medical and Dental Offices or clinics including accessory laboratories for medicine, dentistry, veterinarian practice or other practices of the healing arts	3.9 spaces per 1,000 sq. ft. G.F.A
3. Bank	2.5 spaces per 1,000 sq. ft. G.F.A
4. Supermarket	2.9 spaces per 1,000 sq. ft. G.F.A
5. Convenience food store	2.2 spaces per 1,000 sq. ft. G.F.A
6. Specialty food stores, such coffees, bagels, juice bars (Take-out food/drink primarily	6.6 spaces per 1,000 sq. ft. G.F.A
7. Eating or drinking establishment	13.3 spaces per 1,000 sq. ft. G.F.A



TABLE 50.06.002-12: MINIMUM OFF-STREET PARKING SPACE REQUIREMENTS	
Type of Use	Parking Space Required
8. Eating or drinking establishment with drive up window	9.9 spaces per 1,000 sq. ft. G.F.A
9. Barber shop, beauty salon, personal care services, such as nail, tanning, and therapeutic massage salons	4 spaces per 1,000 sq. ft. G.F.A plus 0.5 space per station
10. Retail sales and rentals, except as otherwise specified herein	3.3 spaces per 1,000 sq. ft. G.F.A
11. Heavy equipment rentals, such as yard and tool equipment	1 spaces per 1,000 sq. ft. G.F.A plus 0.5 per employee
12. Service or repair shop, such as electronic and home appliance repair, upholstery	1.6 spaces per 1,000 sq. ft. G.F.A
13. Automotive repair garage and service station	1.6 spaces per 1,000 sq. ft. G.F.A plus 0.5 per employee
14. Mortuary	1 space per 5 seats based on maximum auditorium capacity plus 1.5 space per employee
<a href="#">15 . Martial arts, music, dance, gymnastics, yoga studios</a>	<a href="#">1 space per 100 square feet G.F.A. of lesson activity floor area, plus .5 space per employee</a>
****	
(H) USES NOT SPECIFICALLY MENTIONED	
Parking requirement 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 href="#">an analysis of the parking needs generated by the type of use [See LOC 50.06.002.2.a.ii(5)].</a> <del>parking study.</del>	

C.7 and D15: 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. Also adds yoga studios.

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

### iii. On-Site Location of Required Parking Spaces

(1) 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.

(2) 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.

### iv. Off Street Parking Options

#### (1) Off-Site Parking

Within commercial, public use, industrial and campus institutional zones, parking may be provided on remote lots within said zones which are within 500 ft. 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 ft. 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 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.

## (2) Shared Parking

(a) 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:~~

~~(i) There are a sufficient number of parking spaces to accommodate the requirements of the individual businesses; or~~

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

~~(iii) 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.

(i) Change from one type of use to another that has higher number of parking spaces required by Table 50.06.002-2 for the new use.

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

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

(B). 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 the Numerical Method, as if that method were applied to the use to determine the parking needs, rather than through a parking study.

(b) Parties involved in shared parking arrangements shall enter into reciprocal agreements, acceptable to the City for such use, by legal instrument which shall also provide for continuing maintenance of jointly used parking facilities.

v. Reduction for Parking Space Requirements

(1) 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 Table 50.06.002-~~2~~3 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.

TABLE 50.06.002- <del>2</del> <u>3</u> : PARKING REQUIREMENT MODIFIERS	
<del>Reduction for Access to Transit Facilities</del>	
<del>COMMERCIAL AND INDUSTRIAL USES (BASED ON DEVELOPMENT SIZE ON A SINGLE SITE (DS))</del>	
<del>GROSS FLOOR AREA</del>	<del>MULTIPLIER</del>
<del>0—20,000 sq. ft.</del>	<del>No reduction</del>
<del>20,000 plus sq. ft.</del>	<del>.85 x requirement</del>
<del>AVAILABILITY OF TRANSIT ACCESS (TA)</del>	
<del>Transit shelter more than 500 ft. from building</del>	<del>No reduction</del>
<del>Transit available with shelter within 500 ft. of building</del>	<del>.95 x requirement</del>
<del>Transit available on fronting street without shelter</del>	<del>.90 x requirement</del>
<del>Transit available on fronting street with shelter within 50 ft. of building</del>	<del>.85 x requirement</del>
<del>Reduction for Pedestrian and Bicycle Access (PA)</del>	
<del>COMMERCIAL AND INDUSTRIAL USES</del>	<del>MULTIPLIER</del>
<del>No hard surfaced pedestrian/bicycle access</del>	<del>No reduction</del>
<del>Hard surfaced pedestrian and bicycle access to 100 or more residential</del>	<del>.90 x requirement</del>

**TABLE 50.06.002-23: PARKING REQUIREMENT MODIFIERS**

~~units within 1000 ft. of the site.~~

~~Reduction Permitted Based on Parking Study~~

~~The Parking Study shall demonstrate sufficient number of parking spaces:~~

~~a. For shared parking with other multiple uses per LOC 55.010(1)(d)(ii)~~

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

~~Parking requirement modification shall be calculated as followed: Minimum requirement by type use x DS (Development Size) x TA (Transit Access) x PA (Pedestrian Access) = modified parking requirement.~~

~~Definitions:~~

~~Transit Access: Availability of transit services as delineated above.~~

~~Pedestrian Access: The means by which pedestrians have safe, adequate and usable ingress and egress to a property or use.~~

<u>Types of Modification</u>	<u>Modification Requirements and Modifiers</u>			
<u>Development Site Size (DS)</u>	<u>Commercial, Public, and Industrial Uses (Based on Development Size on a Single Site (DS))</u>			
	<u>Gross Floor Area</u>	<u>Multiplier</u>		
	<u>1 - 20,000 Sq. ft.</u>	<u>No reduction</u>		
	<u>&gt; 20,000 Sq. ft.</u>	<u>.85 x requirement</u>		
<u>Access to Transit Facilities (TA)</u>	<u>Transit Shelter</u>	<u>On Fronting Street</u>	<u>Within 50 feet of building</u>	<u>.85 x requirement</u>
	<u>Transit Shelter</u>		<u>Within 500 feet of building</u>	<u>.90 x requirement</u>
	<u>Transit Facilities</u>	<u>On Fronting Street</u>	<u>Within 500 feet of building</u>	<u>.90 x requirements</u>
<u>Downtown Redevelopment District</u>	<u>See below</u>			

<u>Pedestrian and Bicycle Access (PA)</u>	<u>Commercial, Public and Industrial Uses</u> <hr/> <u>100 or more residential units .90 x requirement</u> <u>within 1000 feet</u> <hr/>
<u>Downtown Redevelopment District</u>	<u>See below</u>
<u>Downtown Redevelopment District</u>	<u>.75% x requirement</u>
<u>Parking Study</u>	<u>The parking study shall demonstrate sufficient number of parking spaces for Shared Parking with other multiple users per LOC 50.06.002.2.a.iv(2).</u>

~~(a) Within the East End General Commercial zone only, only the parking modifiers permitted by LOC 50.05.004, Downtown Redevelopment District Design Standards, and Development Size, or the Parking Study provision are permissible for reduction options.~~

Modifiers for Transit Shelters and Facilities has been reformatted, and “Transit Shelter more than 500’ of building” is deleted because there is to reduction, and there is no need to state the conditions that don’t warrant reductions in a parking reduction table. The requirement for transit facilities on fronting streets to be within 500’ of building is the logical condition that needs to be added, if the “modifier” states no reduction for facilities that are more than 500’ is removed.

Note: Currently, the Code suggests that a parking study can be used to reduce the parking requirements for uses that are listed in Table 50.06.002-2, 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 Table 50.06.002-2 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.

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 [now Table Table 50.06.002-2], 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 Table 50.06.002-2 should not be a "reduction", but rather a parking study should be used only as a determination of the parking requirement. See Table 50.06.002-2, last paragraph. Once the parking number is determined, *then* the modifiers can be applied.

## 50.06.002 PARKING

### 2. STANDARDS FOR APPROVAL

#### b. Bicycle Parking

#### b. Bicycle Parking

\*\*\*\*vi. 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.

\*\*\*\*

## 50.06.005 PARK AND OPEN SPACE CONTRIBUTIONS

### 4. STANDARDS FOR CONSTRUCTION

#### 4. STANDARDS FOR CONSTRUCTION

[Reserved]

##### a. Maintenance.

##### i. Natural Areas.

Natural areas shall remain in natural condition existing at the time of their designation, except as follows:

- (1) Removal of invasive plants (i.e., see the Lake Oswego Master Plant List).
- (2) Removal of litter,
- (3) Installation and maintenance of any soft surface trails (note: see LOC 50.05.010 (5)(c)(iii)(5) and 50.05.010.6.c.ii(e)(i)(c)).
- (4) Irrigation and maintenance of trees and vegetation as necessary for their survival.
- (5) Planting of trees and vegetation necessary to maintain the functions and values of the natural resource, but primarily not for decorative landscaping purposes.

“but not primarily for decorative landscaping purposes” is added to emphasize that putting in new vegetation in the natural area should be driven by the enhancement of the functions of the natural area, not by the owner’s preference for types of plants as a part of an overall landscaping plan for the property.

- (6) Repair of any natural waterway or wetland which is necessary to maintain the functions and values of any waterway or wetland resource within the natural area,
- (7) Installation of any signage that identifies or protects the natural resource, natural vegetation, and passive recreation facilities.
- (8) Removal of any hazardous trees, pursuant to LOC Article 55.02 (note: condition of approval may require tree to be converted to a wildlife tree).
- (9) Installation and maintenance of fencing that complies with the following:
  - (a). No taller than three ft.,
  - (b) Non-sight obscuring, and
  - (c) No wire mesh or cyclone fence.Such fencing shall be compliant with the provisions of LOC 50.06.004.2 regarding Standards for Construction and Standards for Maintenance of fences, and, if applicable, LOC 50.05.010 (5) or (6).

##### ii. Parks.

Parks shall be maintained by undertaking the following:



- (1) Any activities permitted in Natural Areas above.
- (2) Repair of any natural waterway or wetland which is necessary to maintain the functions and values of any waterway or wetland resource within the park.
- (3) Installation of any signage that identifies or protects the park facilities or vegetation.
- (4) Installation and maintenance of recreation facilities.

b. Responsibility and Enforcement.

Maintenance of private open space shall be the common responsibility of the lot owners, which may be exercised through a homeowners association. If not maintained in accordance with this section, the City of Lake Oswego may enforce the maintenance obligations against the association and lot owners as provided in the covenants.

The definition of "open space" [LOC 50.10.003] is "Parks and natural areas". "Natural Area" currently states the obligation that the natural area *remain* in natural condition. These Maintenance Standards define in greater detail what is permitted maintenance actions.

Currently, planners "condition" the maintenance of open space tracts in their staff reports. There is a concern that the staff report is the only place where maintenance of natural resource and passive recreation tracts area were required to be maintained in a "natural state."

"Recreational Facilities" are defined as:

1. Active Use Recreational Facilities. Facilities for recreational uses that tend to be more organized and/or that require a greater degree of site development and conversion of natural area, including sports fields, playground equipment, group picnic shelters, hard surfaced pathways, permanent restrooms, accessory parking lots and similar facilities.
2. Passive Use Recreational Facilities. Facilities for recreational uses related to the functions and values of a natural area that require limited and low impact site improvement, including soft-surface trails, signs, pedestrian bridges, seating, viewing blinds, observation decks, handicapped facilities, drinking fountains, picnic tables, interpretive facilities, and similar facilities.

## **50.06.006 GEOLOGIC HAZARDS AND DRAINAGE**

### **1. WEAK FOUNDATION SOILS**

#### **1. WEAK FOUNDATION SOILS**

a. Applicability

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

- i. Minor and major development which will involve proposed structures, or
- ii. 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.

\*\*\*

d. 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.

**50.06.006 GEOLOGIC HAZARDS AND DRAINAGE**  
**2. HILLSIDE PROTECTION**

2. HILLSIDE PROTECTION

a. Applicability

This section applies in areas identified as "Slide Area," Slide Hazard," or parcels that have undisturbed slopes in excess of 12%; and where:

- i. Minor and major development will involve proposed structures, or
- ii. Ministerial construction of structures where the requirements of this Article have not been previously addressed.

~~to all development which includes hillsides or areas with erosion potential.~~

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."

\*\*\*\*

#### d. Standards for Approval

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

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

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

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

#### ~~iv~~ii. Development Prohibited

(1) 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 (2), below.

(2) 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.

iv. Cuts and Fills

On land with unretained undisturbed slopes in excess of 12%, cuts and fills shall be regulated in accordance with LOC Chapters 45 and 52, and as follows:

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.

(1) Toes of cuts and fills shall be set back from boundaries of separate private ownerships at least three ft., plus one-fifth of the vertical height of the cut or fill. Where a variance is required from that requirement, slope easements shall be provided.

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

(3) 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.

(4) 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.

(5) 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 from 50.06.006.2.e.iii.(3).

vi. 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.

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

- (1) At least 70% of the site will remain free of structures or impervious surfaces.
- (2) Emergency access can be provided.
- (3) Design and construction of the project will not cause erosion or land slippage.
- (4) Grading, stripping of vegetation, and changes in terrain are the minimum necessary to construct the development.

e. Construction Standards

i. 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.

ii. Plastic mulch may be used only temporarily, during construction activities.

iii. Slope stabilization and re-vegetation measures:

(1) 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.

(2) The developer shall be responsible for the proper execution of the approved grading plan.

~~(3) 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 50.06.006.2.d.iv, as subsection (v).

## 50.06.006 GEOLOGIC HAZARDS AND DRAINAGE

### 3. DRAINAGE STANDARDS

#### a. Drainage Standards for Ministerial and Minor Development

##### a. Drainage Standards for ~~Ministerial and~~ Minor Development

###### i. Applicability

This section shall be applicable to all ~~Ministerial Development Decisions and~~ Minor Development Decisions within the City, except partitions, subdivisions, and construction or alteration of structures as described in LOC 50.07.003.14.a.ii.6.

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 50.07.003.14.a.6; LOC 50.06.006.3.b is applied to those land developments.



**50.06.006 GEOLOGIC HAZARDS AND DRAINAGE**

**3. DRAINAGE STANDARDS**

**a. Drainage Standards for Ministerial and Minor Development**

**ii. Standards for Approval**

ii. Standards for Approval

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:-
- (2). RC Districts on adjacent property; or
- (3). RP Districts on adjacent property.

**50.06.006 GEOLOGIC HAZARDS AND DRAINAGE**

**3. DRAINAGE STANDARDS**

**a. Drainage Standards for Ministerial and Minor Development**

**iii. Standards for Construction and Maintenance**

iii. Standards for Construction and Maintenance

Same as for Drainage Standard for ~~Major Development~~, subsection 3.b below.

**50.06.006 GEOLOGIC HAZARDS AND DRAINAGE**

**3. DRAINAGE STANDARDS**

**b. Drainage Standard for Major Development**

b. Drainage Standard for Major Developments, Partitions, Subdivisions, and Certain Structures

This amendment implements the transparent applicability designation of partitions, subdivisions, and construction or alteration of structures, previously per LOC 50.79.025(2).

i. Applicability

This section is applicable to:

- (1) ~~all m~~ 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 50.07.003.14.a.6.

This amendment implements the designation of partitions, subdivisions, and construction or alteration of structures, as provided previously in LOC 50.79.025(2), and as implemented generally in LU 08-0052 CDC Update (“Housekeeping with Minor Policy Implications”).

ii. Standards for Approval

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(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:

(a). ~~other~~ Other properties;

(b). RC Districts on adjacent property; or

(c). RP Districts 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, but not interfere with the course and flow of water *into* the natural resource.

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**50.07.001 SUMMARY PROCEDURES TABLE**

50.07.001 SUMMARY PROCEDURES TABLE

TABLE 50.07.001-1: SUMMARY PROCEDURES TABLE										
Type of Decision	Code Section	Pre-Application Conference Required?	Neighborhood Meeting Required?	Notice Required?	Public Hearing Required?	Authority				
						R = Recommendation; D = Decision; A = Appeal				
						City Manager	Planning Commission	DR C	HR AB	City Council
Chapter 50.07 Review and Approval Procedures										
Ministerial Development	50.07.00 3.13	No	No	No	No	D				
Minor Development [2]	50.07.00 3.14									
****										
Development in the Willamette River Greenway		Yes	<u>[1]</u>	Yes	Yes	R		D		A
****										

Development within the Willamette River Greenway Overlay District would be treated as all other minor developments, so it no longer needs its own row of procedures.

## 50.07.003 REVIEW PROCEDURES

### 13. MINISTERIAL DEVELOPMENT DECISIONS

#### a. Ministerial Development Classification

#### ii. Ministerial Development Types

##### ii. Ministerial Development Types

\*\*\*\*

(2) Construction or exterior modification of a detached single-family dwelling, duplex, zero lot line dwelling or a structure accessory to such structures which:

(a) Is not processed through the Residential Infill Design Review process pursuant to LOC 50.08.007;

(b) Is not located within a delineated RP resource or RC protection area pursuant to LOC 50.05.010, Sensitive Lands Overlay District;

(c) Does not impact an Historic Landmark designated pursuant to LOC 50.06.009;

(d) 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;

(e) 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; or

~~(f) Is not located on Weak Foundation Soils as identified in LOC 50.06.006.1.b;~~

~~(g) Is not located in a "Known Potential Severe Landslide Area" as defined in LOC 50.06.006.2, Hillside Protection; or~~

Due to proposed changes to the LOC 50.06.006.1 (Weak Foundation Soils) and LOC 50.06.006.2 (Hillside Protection), 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.

~~(h)~~ Is not located in the Greenway Management Overlay District, as identified in LOC 50.05.009.

## 50.07.003 REVIEW PROCEDURES

### 13. MINISTERIAL DEVELOPMENT DECISIONS

#### e. Review and Decision

#### ii. Review Criteria for Ministerial Developments

##### ii. 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) Parking, LOC 50.06.002.

~~(2) Drainage Standards for Ministerial and Minor Development, LOC 50.06.006.3.a.~~

Per revisions to LOC 50.06.006 GEOLOGIC HAZARDS AND DRAINAGE, 3. DRAINAGE STANDARDS, a. Drainage Standards for Ministerial and Minor Development, 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.) See commentary under LOC 50.06.006.3.a. 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).

~~(3) Hillside Protection, LOC 50.06.006.2.d.iii-v; LOC 50.06.006.2.e; and LOC 50.07.004.3.a.i, and ii.~~

This amendment removes the subsections of Hillside Protection Standard, as the practice has been to review all of the subsections of the article.

This amendment also removes LOC 50.07.004.3.a.i and ii as review criteria; these sections are Hillside Protection submission requirements.

(4) On-Site Circulation – Driveways and Fire Access Roads, LOC 50.06.003.2.

(54) If the ministerial development involves placement of a manufactured home, Manufactured Homes, LOC 50.03.003.1.c.

(65) Building Design Standard LOC 50.06.001.5.b.viii [mechanical equipment screening].

(6). Weak Foundation Soils, LOC 50.06.006.1, for construction of structures where the requirements of LOC 50.06.006.1 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.

(7) If located in the Flood Management Area, LOC 50.05.011.

## **50.07.004 ADDITIONAL SUBMISSION REQUIREMENTS**

### **10. WEAK FOUNDATION SOILS DETERMINATION PROCEDURES**

#### 10. WEAK FOUNDATION SOILS DETERMINATION PROCEDURES

##### ~~a. 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.~~

##### ~~ba.~~ Report Required

i. 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 proposed use and ~~intended types 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 and structure.

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.

ii. 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 structures.

iii. 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:

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

(2). The building plans for the structure comply with the corrective measures recommended under subsection (ii) 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.

eb. City Manager Review

i. 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.

The changes 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.

ii. Pursuant to the Building Code:

(1) 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.

~~iii(2)-~~ 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.~~

These changes clarify the involvement of the Building Official.

## 50.07.007 LAND DIVISIONS

### 2. FLAG LOTS

#### d. Lot Configuration Requirements

##### d. Lot Configuration Requirements

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##### iii. Lot Depth

##### ~~iii. Lot Depth~~

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

Note: Infill adopted a special "lot depth" provision for flag lots, in LOC 50.20.030(6):

6. Width and Depth Requirements. The standard zoning dimensional requirements for lot depth do not apply to flag lots. No width or depth dimension of a flag lot shall be less than the standard width dimension listed for lot under its respective zone.

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.



~~iv~~iii. 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.

**50.07.007 LAND DIVISIONS**

**2. FLAG LOTS**

**e. Building and Site Design Standards**

e. Building and Site Design Standards

\*\*\*

vi. ~~Width~~ Lot Width ~~and Depth~~ Requirements

~~The standard zoning dimensional requirements for lot depth do not apply to flag lots. No~~ The lot width ~~or depth~~ dimension of a flag lot shall be not less than the ~~standard width dimension listed for lot under its respective zone~~ minimum lot width requirements of the underlying zone.

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.

## 50.07.007 LAND DIVISIONS

### 2. FLAG LOTS

#### f. Screening, Buffering and Landscape Installation

##### f. Screening, Buffering and Landscape Installation

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iii. 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 six ft. tall fence, except where a four ft. fence is required by LOC 50.06.004.2.c.i, Fences, 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 six ft. in width shall be created along the rear property line and planted with a deciduous or evergreen hedge, a minimum four ft. in height at planting which shall grow to a height of six ft. 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.

##### iv. Tree Removal Mitigation

A minimum of one evergreen or deciduous tree, ~~of a species which will attain a minimum of 30 ft. 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 as a part of the creation of the lot or for the first dwelling constructed on the lot. The mitigation trees shall be of a species which will attain a minimum of 30 feet in height. Deciduous trees at planting shall be a minimum of two in. caliper and evergreen trees shall be a minimum of eight ft. tall.

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. The Deputy City Attorney 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.) The Planning Commission

considered three options (lot creation development; lot creation and first dwelling construction, and perpetuity) and concluded that enhanced tree mitigation should apply to development on the lot that both occurs at the time of lot creation and for the construction of the dwelling that inevitably follows, but not in perpetuity.

A second question arose regarding flag lot tree removal mitigation: if flag lots are to retain the trees on the site to screen and mitigate the flag lot, should tree removal for any reason (Class 1, Class 2, dead, hazardous, emergency, or verification tree removal) require mitigation, given the screening and buffering element required for approval of flag lots. Staff concludes that no additional code text is needed to address this concern. Mitigation of tree removal for trees that were used for screening, regardless of cause, can be achieved through the Tree Code's mitigation requirement, LOC 57.02.094: "The City may impose conditions of approval on any tree cutting permit if the condition is reasonably related to preventing, eliminating or mitigating a negative impact or potential impact on natural features or processes or on the built environment of the neighborhood which is as created or contributed to by the approved tree removal."

## **50.07.007 LAND DIVISIONS**

### **4. PLANNED DEVELOPMENT OVERLAY**

#### **c. Procedures**

##### c. Procedures

##### i. Multi-Phase PD Overlay Approval

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 50.07.006. 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 section or by creating special zoning standards pursuant to this section.

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.

##### ii. Single-Phase PD Overlay Approval

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 (i), above, for the adoption of zone requirements in the Final Order shall be complied with.

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.

iii. Following Approval of a PD Overlay:

(1) 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 modification ~~to the development permit granting the PD Overlay,~~ pursuant to LOC 50.07.003.11; no variance (LOC 50.08.002 or 50.08.003) is permitted; ~~or~~

(ii). ~~\_\_\_\_\_ further exceptions to the modified underlying zone requirements are permissible through the~~ A Residential Infill Development (RID), pursuant to process (LOC 50.08.007); to the extent RID permits exceptions to certain zone standards, no Planned Development permit modification is required ~~without modification of the PD Overlay.~~

**(2b) 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 maximum floor area, 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 zone requirements ~~of the underlying zone~~ shall be processed as:

(i). ~~\_\_\_\_\_ a~~ A variance pursuant to LOC LOC 50.08.002 or 50.08.003 ~~50.08~~ or,

(ii). ~~\_\_\_\_\_~~ for qualified residential developments, processed according to the provisions of LOC Article 50.08.007, RID.

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 50.07.007.4.d], 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.

### **(32) PD Applications Filed Prior to August 14, 2003**

For PD applications filed prior to August 14, 2003, the following standards do not apply:

- (a) The maximum floor area standards of LOC 50.04.001.1, Residential Low Density Zones;
- (b) The maximum floor area standards of LOC 50.04.00.1.2, Residential Medium Density Zones – R-5 only;
- (c) The height exception, front setback plane, side yard setback plane, and garage appearance and location standards for all residential districts.

### **(3). Maximum Structure Height In PD**

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.

#### 50.07.007 LAND DIVISIONS

#### 4. PLANNED DEVELOPMENT OVERLAY

#### d. Authorization

#### d. Authorization

#### i. Underlying Zone

(1) In considering an application for a PD Overlay, the reviewing authority shall apply the ~~height, maximum floor area, lot coverage, garage appearance and location, use, open space and density~~ requirements of the underlying zone. The maximum floor area and lot coverage requirements may be applied with reference to the total area.

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

(2) If the proposed PD is part of an approved ODPS as described in LOC Article 50.07.006, requirements of the ODPS approval regarding arrangement of uses, open space and resource conservation and provision of public services, will be considered when reviewing the considerations in subsection (1), above, for the PD.

#### ii. Dimensional Exceptions

(1) The reviewing authority may grant exceptions to ~~the lot size, front setback plane, maximum side yard plane, lot dimension and front and rear setback requirements of the underlying zone~~ requirements (except for the zone requirements and limitations listed below) if the applicant demonstrates that the proposed PD provides the same or a better sense of privacy, appropriate scale and open space 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 (2) below in determining whether to approve the exceptions. ~~The considerations in granting the exceptions are set forth in subsection (2) below:~~

(a). No exceptions shall be approved for the following zone requirements:

- (i). The special setback requirements for steeply sloped lots in the R-5 zone [LOC 50.04.001.2.e.i.(2)] and R-0, R-2, and R-3 zones [LOC 50.04.001.3.e.vi],
- (ii). Height of building;
- (iii). Use;
- (iv). Open space; and
- (v). Density.

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.

(b). Lot Coverage and Floor Area Limitations.

- (i). The aggregate lot coverage for all of the lots shall not exceed the maximum lot coverage based on the net developable acre of the project,

The addition of “net developable acre” [formerly “net buildable” area, proposed for repeal] 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.

- (ii). The total floor area of all lots 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.

(2) In making the determination under subsection (1), the reviewing authority may consider:

- (a) Whether the applicant has reserved or dedicated more than the minimum amount of open space required by Park and Open Space

Contributions [LOC 50.06.005] ~~the Park and Open Space Development Standard;~~

The Park (or Parks and Open Space) Development Standard is now titled Park And Open Space Contributions [LOC 50.06.005]

(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) 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) 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) Whether the requested exception will provide better linkage with adjacent neighborhoods, ~~parks and~~ open space areas, pathways, and natural features; or

LU 08-0052: The definition of "open space" has been expanded to include park lands.

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

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## 50.07.007 LAND DIVISIONS

### 4. PLANNED DEVELOPMENT OVERLAY

#### d. Authorization

#### iii. PD Standards

##### iii. PD Standards

(1) 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:

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.

(a) Development in R-0, R-2, R-2.5, R-3, R-5, R-6 zones: 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.](#)

(b) Development in R-7.5, R-10, and R-15 zones: 80% 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.](#)

The 75% / 80% 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.

(c) Housing types located on the perimeter lots described in (1), above, 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.

(d) In a PD located in a R-0, R-2, R-2.5, 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.

**50.08.002 MINOR VARIANCE**

**3. CLASSIFICATION OF VARIANCES**

3. CLASSIFICATION OF VARIANCES

a. Variance from front, rear, side, and 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~~ associated accessory structures that ~~do~~ not comply with the three criteria set forth in LOC 50.03.004.2.b.i(1)-(3):

i. 20%, or less, provided the resulting side yard setback is no less than five ft. in width; or

ii. The request is the minimum necessary to preserve a tree and both:

(1) The resulting yard setback is no less than 50% of standard required by the zone

(2) Side yards are not reduced to less than five ft.

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.

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j. Variances to street frontage (LOC 50.06.003.1.c) ), 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."

## 50.10.003 DEFINITIONS

### 2. DEFINITION OF TERMS

#### 2 DEFINITION OF TERMS

The following terms shall mean:

\*\*\*\*

**Accessory Structure (Accessory Building).** Any detached ~~building structure~~ the use of which is subordinate and consistent with that of the ~~main primary building structure~~ and which is consistent with the ~~buildings structures~~ and uses allowed in the zone in which it is located.

Examples: play structures, sheds, and gazebos.

This amendment clarifies that play structures and similar are treated as accessory structures for purposes of placement within the special setback requirements for accessory structures. LOC 50.14.005(5).

Note: Since play structures are accessory structures, when a house is built at the maximum lot coverage, later addition of accessory structures (including play structures) would be prohibited. Staff discussed an exemption to lot coverage for play structures, and all accessory structures, of 100 square feet. But this would result in expansion of lot coverage, which is not favored due to impact on storm water management and water quality / impervious surface.

\*\*\*\*

**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 include, 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.

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. Note: There is no conflict between permitting *cooking* facilities within the boathouse but prohibiting *eating* facilities inside the boathouse; an eating area outside of the boathouse complies with the boathouse definition.

\*\*\*\*

**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,
- 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 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 where there are no eaves, the separation shall be measured between the closest elements (excluding breezeways, air conditioning units, heat pumps, and similar attached or connected fixtures to the structure) of the two structures. (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.

The three foot separation would not apply to breezeways, air conditioning units, heat pumps, and the like, as these small attachments to a structure do not result in the perception that the two structures are attached or joined.

\*\*\*\*

**Dwelling Unit, Secondary:** A second dwelling unit, either attached or separate, located on a lot already containing a dwelling unit. The following dwelling configurations shall also constitute a secondary dwelling unit regardless of 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 50.03.003.1.f, or

b. A portion of the dwelling structure contains the elements of a secondary dwelling unit pursuant to LOC 50.03.003.1.f, and the other portion of the dwelling structure meets the definition of "dwelling unit", and the two portions are physically separated from each

other by means of a wall or other permanent barrier, so that the usual and customary use of the two portions of the dwelling structure is as separate dwelling units, not as a single, interconnected housekeeping unit.

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 gross building floor area excluding:

a. attic (the unfinished space between the ceiling joists of the top story and the roof rafters)

This amendment excludes unfinished attics from “floor area”.

- a**b.** Vent shafts,
- b**c.** Court yards,
- e**d.** Garages, except as modified in:
  - i. The R-5 zone (Section LOC 50.06.035 (1)(b)(i), for residential development);
  - ii. The R-6 zone (Section LOC 50.07.037 (1), for outright permitted residential development);
  - iii. The R-7.5, R-10, and R-15 zones (LOC Section 50.08.042 (1), for single family dwellings);
- d**e.** Allowable projections,

- ef. Decks,
- fg. Patios,
- gh. Uncovered exit stairs, and

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.

- hi. Uncovered, above-grade driveways.

\*\*\*\*

**Gross Building Floor Area.** The combined square footage area (measured from the exterior of the surrounding exterior wall framing) of a building or portions thereof of all stories of a building. 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 “gross building floor area” unless otherwise stated.

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". 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.

This amendment would also establish “floor area” as the method of measuring square footage of a building, unless otherwise specified.

\*\*\*\*

**Floor Area Ratio (FAR)** The ratio of the floor area to the ~~net buildable acre~~ 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 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 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 50.03.002.3 (USE TABLE; Commercial Uses), as compared to LOC 50.03.004.2.b. (Setback Reduction for Accessory Structures). 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 Measurement of Building Height figure below.
- c. On Lots within the Flood Management Area:
  - (i). 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 50.05.011, Flood Management Area, 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.

(ii) Residential - Waterfront Cabanas (R-W) Zone: the Oswego Lake Surface Elevation.

This methodology is brought over from Table 50.04.001-11: Residential – High Density Zones Dimensions, Max. Base Height, “From the mean water level surface of Oswego Lake”, 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 Surface Elevation” (term adopted by CDC Update LU 08-0052).

d. On Lots Within Planned Developments: For the purposes of determining building height, ground surface shall mean the elevation of the:

- i. Natural ground surface; or
- ii. Altered ground surface, as a result of the prior planned development approval.

Originally, this definition of building height within PDs was a part of the Sloped Lot, now known as Sloped Footprint. In LU 08-0052, it was deleted from Sloped Lot and to be moved into Building Height, here in LU 08-0054. This amendment clarifies the distinction between “natural” and “altered” ground surface. The “altered ground surface” arises when the PD approval includes a grading plan.

Exception: The ground surface of a window well shall be deemed to be the same as the adjacent ground surface when the dimensions of the window well do not exceed three ft. by six ft. and the cumulative width of the window well(s) on a building façade do not exceed 40%.

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 permanent~~ structures or portions thereof over 30 inches in height ~~with or without exterior walls~~, but exclusive of:



This amendment clarifies that lot coverage is applied only to “permanent” structures. This amendment also corrects typographical error (inch → inches) and 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.

a. ~~vent~~ Vent shafts,

b. Portions of eaves that extend two ft. 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.

c. Open-roofed courtyards,

d. Flowerboxes not exceeding two ft. in depth and 110% of the width of the adjoining window / door;

e. Decorative metal balconies, i.e., wrought iron, not exceeding two feet in depth and 110% of the width of the adjoining window / door;

f. 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.

g. Boat houses;

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

h. Fences and retaining walls.

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

i. Other structures similar to the structures above, except boat houses.

The Planning Commission finds that the exclusive listing of exceptions 1-8 above is not flexible, and that some structure would not be included on the list but it should be because it was similar to a listed exception. The Commission suggested including “other similar structures” as an additional exemption, but noted that “boat houses” was

different in kind from the list and was exempted from lot coverage because it was a unique type of structure.

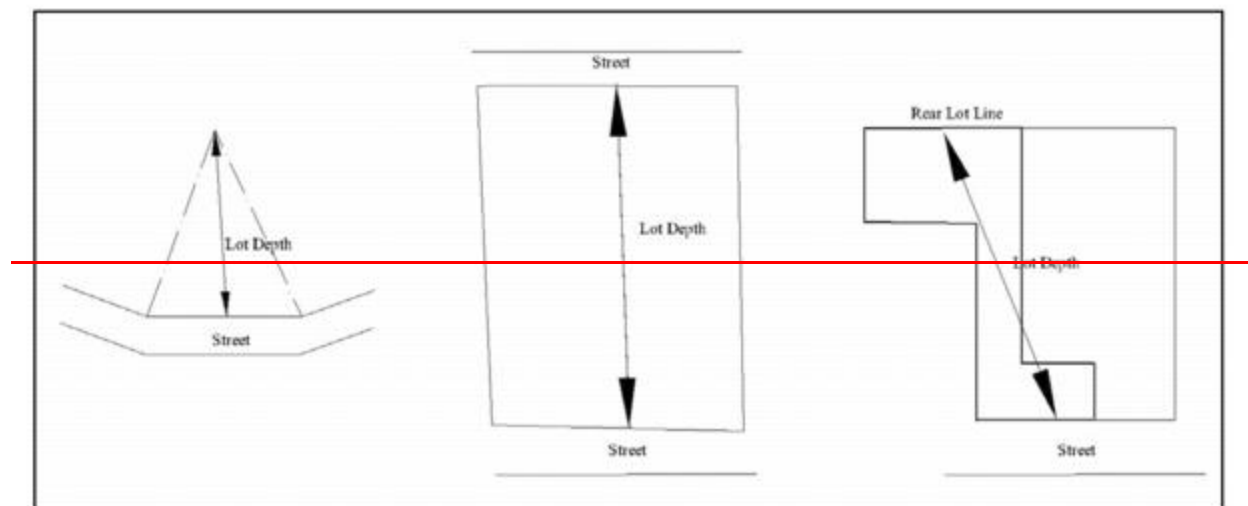
and

B is the gross acreage of the site, ~~excluding area in 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”.

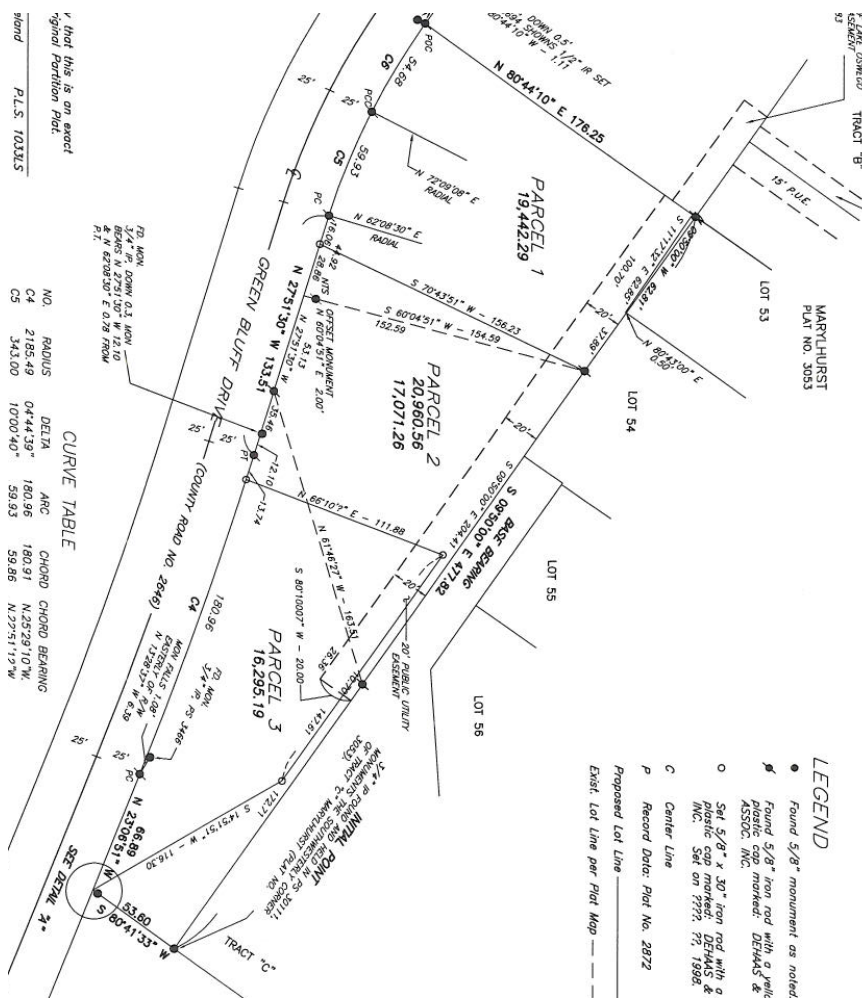
“Access easements” is deleted to include the exclusion now existing in “net buildable acre”. Further Staff consideration recommends that “private streets” also be excluded because of the similarity of private streets and access easements. If public right of way is the only exclusion, it is not needed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

**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. Lot depth measurement illustrations follow:~~



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.



\*\*\*\*

**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. 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) through (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. 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.

\*\*\*\*

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

- a. the area in street right-of-way or access easements, [except that the area of a vehicular 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](#);
- b. [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.

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### **Public Transportation Facilities**

Those facilities that are associated with a transportation system, such as bus stops, transit centers, light rail, [trails designated as a regional, community connector, or local access trails on the City’s Trails and Pathway Master Plan](#), and similar facilities, but excluding public or private streets.

Regional trails, community connector trails, and local access trails, as designated on the City’s Trails and Pathway Master Plan, would be defined as “public transportation facilities” and would be permitted development within sensitive lands

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~~**Secondary Dwelling Unit.** A second dwelling unit, either attached or separate, located on a lot already containing a dwelling unit, which complies with LOC 50.03.003.1.f, Secondary Dwelling Unit.~~

“Dwelling Unit, Secondary” definition has been added. 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.