

**STAFF REPORT**

**CITY OF LAKE OSWEGO**

**PLANNING AND BUILDING SERVICES DEPARTMENT**

APPLICANT

City of Lake Oswego

FILE NO.

LU 17-0052, Ordinance 2759

LOCATION

Residential Citywide

STAFF

Leslie Hamilton, AICP, Senior Planner

DATE OF REPORT

September 29, 2017

PLANNING COMMISSION HEARING DATE

October 9, 2017

**I. APPLICANT'S REQUEST**

The City of Lake Oswego is proposing to amend Chapter 50 (Community Development Code) of the Lake Oswego Code for the purpose of amending various sections relating to flag lots and access lanes. The proposed amendments include provisions that will:

- Limit the number of flag lots served by a private access lane;
- Increase the number of parking spaces required in flag lot developments;
- Increase the front setback on flag lots;
- Provide flexibility on setback orientation on certain flag lots;
- Delete the requirement to connect private access lanes;
- Clarify that lot coverage and floor area on flat lots are calculated on net site area;
- Clarify the location of required landscaping and fencing in flag lot developments.

The amendments are more fully described in Section III of this report as well as in the narrative of the Public Review Draft, Exhibit F-1. The draft text amendments which would enact these changes, can be found in Attachment to 2 to Exhibit A-1 (Ordinance 2759).

**II. APPLICABLE REGULATIONS**

A. Any Applicable State Law

Oregon Revised Statute 197.307: Approval Standards for Certain Housing in Urban Growth Areas

B. City of Lake Oswego Comprehensive Plan

**Land Use Planning**

Development (Community Development Code): Policy A-1.b

Design Standards and Guidelines: Policies C-1 and C-5

Land Use Administration: Policy D-1

Inspiring Spaces and Places: Goal 1, Policy 1

**Complete Neighborhoods and Housing**

Housing Choice and Affordability: Policy B-1

Complete Neighborhoods: Policy C-7

Community Culture: Civic Engagement Policies 1 and 9

C. City of Lake Oswego Community Development Code

LOC 50.07.003.3.c.	Published Notice for Legislative Hearing
LOC 50.07.003.16a	Legislative Decisions Defined
LOC 50.07.003.16b	Criteria for Legislative Decision
LOC 50.07.003.16c	Required Notice to DLCD
LOC 50.07.003.16.d.iii	Planning Commission Recommendation Required
LOC 50.07.003.16.e	City Council Review and Decision

### III. INTRODUCTION / BACKGROUND INFORMATION

The purpose of the proposed amendments is to correct errors, eliminate text ambiguity or redundancy, and clarify text. Additionally, the amendments respond to community concerns regarding flag lot developments. This process is part of the City's ongoing effort to make the regulations more business-friendly and resident-friendly while maintaining community standards.

Proposed Ordinance 2759 consists of amendments to the flag lot standards. Staff had previously requested input from the public and the Planning Commission on an amendment that would have added a requirement to provide open space for partition sites that are 75,000 square feet or larger. Based on input from the public and Planning Commission, that amendment is not proposed. It was believed that it could result in small private open space areas that would have little or no public benefit and could be difficult to maintain.

The text boxes in Attachment 2 describe the reason for each amendment, and include commentary on its background and discussion points. The amendment that generated the most discussion at the work sessions and Public Review Draft – limiting the number of flag lots served by an access lane - is further described and analyzed below.

Section II (Background) of the Public Review Draft (Attachment 2) describes the policy issues behind each of the proposed amendments as listed below:

- Limits on the Number of Flag Lots
- Access Lane Parking
- Lot Line Adjustments and Flag Lots
- Setbacks and Dwelling Orientation on Flag Lots
- Garage Appearance and Location Standards for Flag Lots
- Flag Lot Front Setbacks
- Setback Distribution on Flag Lots in the R-5 Zone
- Lot Coverage and Floor Area Calculations for Flag Lots
- Flag Lot Screening and Fencing

#### Comments on Public Review Draft

The Public Review Draft was circulated August 15 – August 31, 2017 for public review and comments. Seven comments were received from the following: three individuals, three Neighborhood Associations (Hallinan Heights, Forest Highlands and Evergreen), and one professional organization (the Home Builders Association of Greater Portland), [see Exhibits G-1 through G-7].

On the larger policy issues, there did not appear to be consensus in the public comments. Three approved of limiting the number of flag lots served by an access lane, and supported limits ranging from one to three to six dwellings; two were opposed due to potential impacts to density. On the question of flag lot parking, two commenters support requiring additional parking but suggested different standards. Two commenters were opposed the then-proposed requirement of Open Space dedication for certain serial partition sites.

### Density Impacts from Limiting Flag Lot Development

One consideration with a limitation in the creation of flag lots is the concern that owners may have about a reduction of their development opportunities. Limitations on uses that create a demonstrable reduction in property values have the potential for triggering Measure 49 claims, which could result in a waiver of the limiting regulations in certain cases. Currently, up to eight dwellings can be served by a private access lane, which has a minimum width of 20 feet (because the flag lot standards require a 5-foot buffer on the outer edge of an access lane, staff has used a 25-foot access lane width for the purposes of analysis). Public streets generally require a right-of-way dedication width of 50 feet. If the number of flag lots were limited to six lots, for example, a public street would be required to serve a development of seven or more lots. Attachment F-2 is a spreadsheet that calculates the maximum density of flag lot developments that are served by an access lane compared to developments that create a public street to serve the lots. [Note: The analysis is broad and assumes rectangular parent parcels, access lanes and public street alignments that are straight and extend from the fronting public street to the rear of the parent parcel; slopes, sensitive lands and other constraints were not included in the analysis. There are many factors that affect access, density and lot layout, including the opportunity for density transfers on sites with sensitive lands.]

The analysis shows that the biggest impact to density comes on parent parcels that are long and narrow (75 ft. x 1,000 ft.). In the low-density residential zones (R-7.5, R-10 and R-15), density impacts are generally small (loss of one lot) or none. On larger lots, there can be a density gain from providing a public street since flag lot developments are currently limited to eight lots. However, public streets are considerably more expensive to design and construct; public streets, unlike access lanes, include sidewalks, curbs and gutters and the additional impervious surface area must be managed in storm facilities. Additionally, private access lanes are maintained by the property owners who jointly use them. Once a public street is dedicated, the City would assume the financial burden of its maintenance.

Staff identified the properties that were dividable either individually or cumulatively if abutting properties are under the same ownership. Exhibit E-1 calculates density based on flag lot development, i.e., 10% of the lot area is devoted to circulation and netted out of the gross acreage before calculating density. Exhibit E-2 calculates density based on the provision of a public street, i.e., 20% of the lot area is devoted to

circulation and netted out of the gross acreage before calculating density. The maps also illustrate RP designations and steep slope, which can further affect density or lot configuration. In addition, undivided properties typically have frontage onto an existing public street; as these properties are divided, the City requires dedication of right-of-way for frontage improvements such as widening of a street or a pathway. Because these right-of-way dedications are subtracted from the net buildable area they too reduce development potential, regardless of whether a site is developed with a private access lane or public street.

The maps illustrate that many of the lots that are *potentially* dividable into 5 or more lots have constraints such as limited access, steep slopes, sensitive lands, historic landmarks, and/or odd shapes. While some of these constraints do not limit the number of permitted lots, they may limit their development likelihood, even under current regulations.

Lake Oswego's Housing Needs Analysis (HNA), adopted in 2013, shows that Lake Oswego has more low-density residential land than will likely be needed by the year 2035 to accommodate demand for single-family homes in the R-7.5, R-10 and R-15 zones. The HNA estimates a dwelling unit capacity of 1,646 units in these zones, and a demand for 783 units, leaving a surplus of 863 units. Given the constraints on many of the potentially dividable lots as shown in Exhibit E-1 and E-2, the potential loss of residential flag lots as described above is minimal, and does not impact the City's ability to meet future low-density residential housing needs.

#### **IV. NOTICE OF APPLICATION**

A. Newspaper Notice

On November 28, 2017, public notice of the proposed CDC text amendments and Planning Commission public hearing was published in the *Lake Oswego Review*.

B. ORS 227.186 (Measure 56) Notice

The City followed the procedures required by ORS 227.186 (Ballot Measure 56) for notification of the owners of property potentially affected by the changes. The notice was mailed to all residential property owners with property – individual or abutting – that could be further divided on September 11, 2017.

C. DLCD Notice

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

D. Metro Notice

Pursuant to Metro Code 3.07.810 and .820, staff provided notice of the proposed CDC text amendments to Metro not less than 35 days prior to the hearing date.

## V. COMPLIANCE WITH APPROVAL CRITERIA

Legislative amendments to the CDC shall comply with the following criteria:

A. Any Applicable State Law

**Oregon Revised Statute 197.307: Approval Standards for Certain Housing in Urban Growth Areas**

**Response:** This statute requires that jurisdictions provide a clear and objective approval path for “needed housing.” The proposed flag lot amendments, which apply to the development of single-family housing, maintain existing clear and objective language for single-family dwellings. The code amendments also maintain the existing Residential Infill Design (RID) Review variance procedure for granting exceptions to the existing zone design and dimensional standards, consistent with the two-track approach (clear and objective path and design review path) that is authorized by the statute.

This criteria is met.

B. Applicable Provisions of the City of Lake Oswego Comprehensive Plan

Staff finds that the following Comprehensive Plan Policies are applicable to this proposal:

***Land Use Planning Chapter Policies (Statewide Planning Goal 2)***

Development (Community Development Code)

A.1.b: *Maintain land use regulations and standards to: \*\*\* (b) promote compatibility between development and existing and desired neighborhood character.*

**Response:** The proposed CDC amendments promote compatibility of new single-family development by revising standards for flag lot setbacks, parking, landscaping and access lanes to be more compatible with the existing neighborhood character.

This criteria is met.

Design Standards and Guidelines

C-1. *Enact and maintain regulations and standards which require:*  
C-5. *Adopt and maintain clear and objective standards for needed housing, pursuant to state law.*

**Response:** The proposed flag lot amendments are consistent with this policy. See above response to Section A, Applicable State Law.

Land Use Administration

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

**Response:** Metro and the DLCD were notified of the proposed text amendment at least 35 days prior to the first Planning Commission hearing, as required by Metro Code and State law.

This criteria is met.

## **Community Culture**

### Civic Engagement Goal (Statewide Planning Goal 1)

1: *Provide citizen involvement opportunities appropriate to the scale of a given planning effort, \*\*\*\*.*

2: *Ensure that information related to land use planning and decision-making is readily accessible to the public and easy to understand.*

**Response:** The Planning Commission has held four work sessions in 2017 on the flag lot amendments (January, February, April and June) to review and provide feedback on the Code. In addition, two Public Review Drafts have been circulated to the public – one in April – May and one in August. A notice required by ORS 227.186 (Ballot Measure 56) was sent to all property owners in the city with residential property that is potentially dividable with information about the proposed code changes, and a notice of public hearing was sent to all Lake Oswego Neighborhood Association chairs, along with local and regional organizations, including LONAC, the Lake Oswego Chamber of Commerce, and Metropolitan Homebuilders Association, and affected public agencies.

These criteria are met.

## **Inspiring Spaces and Places**

1: *Adopt implementation measures and guidelines that ensure:*

- a. *New development in residential areas complements the existing built environment in terms of size, scale, bulk, height, and setbacks.*

**Response:** The proposal is consistent with this policy, which is similar to Land Use Policy C-1. See response to Policy C-1, above.

## **Complete Neighborhoods and Housing (Statewide Planning Goal 10)**

### Housing Choice and Affordability

B-1: *Provide and maintain zoning and development regulations that allow the opportunity to develop an adequate supply and variety of housing types, and that accommodate the needs of existing and future Lake Oswego residents.*

**Response:** The amendments to the flag lot standards affect all residential zones except R-W (cabana). Minimum lot size is unchanged in all of these zones. The amendments reduce the number of flag lots that can be served by

an access lane to less than eight, which may limit the creation of new homes on small number of lots.

Lake Oswego's Housing Needs Analysis (HNA), adopted in 2013, shows that Lake Oswego has more low-density residential land than will likely be needed by the year 2035 to accommodate demand for single-family homes in the R-7.5, R-10 and R-15 zones. The HNA estimates a dwelling unit capacity of 1,646 units in these zones, and a demand for 783 units, leaving a surplus of 863 units. The potential loss of residential flag lots as described on pages 3-5 above is minimal, and does not impact the City's ability to meet future low-density residential housing needs.

This criteria is met.

Complete Neighborhoods

*C-7: Require infill housing to be designed and developed in ways to be compatible with existing neighborhood character.*

**Response:** The proposal is consistent with this policy, which is similar to Land Use Policy C-4. See response to Policy C-4, above.

***Community Culture Chapter/ Civic Engagement Policies (Statewide Goal 1):***

- 1. Provide citizen involvement opportunities appropriate to the scale of a given planning effort, and ensure those affected by a Plan have opportunities to participate in the planning process.*
  
- 9. Utilize broadly representative, special citizen advisory bodies to provide input on implementation of the Comprehensive Plan and other related land use planning matters.*

**Response:** Citizen involvement opportunities have included four study sessions and two public review drafts, and mailed notice to all residential property owners potentially affected by the reduction in the number of flag lots served by an access lane, and opportunity to comment at the Planning Commission hearing.

These criteria are met.

C. Lake Oswego Community Development Code Procedural Requirements

LOC 50.07.003.3.c.	Published Notice for Legislative Hearing
LOC 50.07.003.16a	Legislative Decisions Defined
LOC 50.07.003.16b	Criteria for Legislative Decision

LOC 50.07.003.16c	Required Notice to DLCD
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LOC 50.07.003.16.e	City Council Review and Decision

**Response:** The Community Development Code 50.07.003.16.a defines “legislative decisions” to include amendments to the CDC and to Comprehensive Plan policies. Public hearings by the Planning Commission for recommendations to the City Council for “legislative decisions” are required to have at least 10 days prior published notice, per LOC 50.07.003.16.d.iii and 50.07.003.3.c. Notice is defined as being published in a newspaper of general circulation in the City of Lake Oswego at least ten days in advance of the hearing, and mailed at least ten days in advance to the Commission for Citizen Involvement and to all recognized neighborhood associations. The notice shall include:

- i. The time, date, and place of the public hearing;
- ii. A brief description of the proposed legislative amendment; and
- iii. A phone number for obtaining additional information.

A Public Review Draft was circulated between August 15 and August 30, 2017, and public hearings will be held before the Planning Commission and City Council. All required notification measures and opportunities for input as specified in the Code were provided during this process, including noticing to all Neighborhood Associations and business organizations. Public hearings will be held before the Planning Commission and City Council. Therefore, the process followed for these amendments is in compliance with the above cited Comprehensive Plan policies. These criteria are met.

## VI. RECOMMENDATION

Staff recommends that the Commission make a recommendation to City Council on the amendment options presented, and to adopt Ordinance 2759 (including the attachments).

### EXHIBITS

#### A. Draft Ordinance

A-1 Ordinance 2759, draft 09/28/17

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

Attachment 2: Community Development Code Amendments Draft, 08/15/17



- B. Findings, Conclusions and Order [No current exhibits; reserved for hearing use]
- C. Minutes [No current exhibits; reserved for hearing use]
- D. Staff Reports [No current exhibits; reserved for hearing use]
- E. Graphics/Plans
  - E-1 Density Analysis: Serial Partitions and Access Lanes
  - E-2 Density Analysis: Serial Partitions and Public Streets
- F. Written Materials
  - F-1 Public Review Draft Narrative, 08/15/17
  - F-2 Spreadsheet Comparison of Flag Lot/Access Lanes and Public Streets, 09/29/17
- G. Letters and E-Mails
  - G-1 Letter from Sheila Carlson, 08/29/17
  - G-2 Letter from Bill Abadie with Hallinan Heights Neighborhood Association, 08/30/17
  - G-3 E-Mail from Dianne Cassidy, 08/30/17
  - G-4 E-Mail from Jim Standring, 08/31/17
  - G-5 Letter from James Adkins with Home Builders Association of Metro Portland, 09/05/07
  - G-6 E-Mail from Scott Bullard with Forest Highlands Neighborhood Association, 09/06/17
  - G-7 E-Mail from Diana Boom with Evergreen Neighborhood Association, 09/27/17