

STAFF REPORT

# CITY OF LAKE OSWEGO

## PLANNING AND BUILDING SERVICES DEPARTMENT

APPLICANT

City of Lake Oswego

FILE NO.

LU 16-0030, Ordinance 2732

LOCATION

Citywide

STAFF

Leslie Hamilton, AICP

DATE OF REPORT

November 3, 2016

PLANNING COMMISSION HEARING DATE

November 14, 2016

### I. APPLICANT'S REQUEST

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

- Clarify the requirement for courtyards in the Downtown Redevelopment Design Area
- Clarify the measuring point for Front and Side Yard Setback Planes
- Identify appropriate exceptions to the Pre-Application Conference requirement
- Codify requirements for Neighborhood Associations to provide documentation of a vote in order to receive a waiver of a land use appeal fee
- Amend the definition of "Height of Building" in reference to subdivisions

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

## II. APPLICABLE REGULATIONS

### A. City of Lake Oswego Comprehensive Plan

Community Culture – Civic Engagement, Policies 1, 2, 4 and 5  
Land Use Planning - Land Use Administration, Policy D-1  
Inspiring Spaces and Places – Goal 1, Policy 7

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

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

## III. INTRODUCTION / BACKGROUND INFORMATION

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

Proposed Ordinance 2732 consists of over 40 text amendments. The colored text boxes in Attachment 2 describe the reason for each amendment, and include commentary on its background and discussion points. The amendments that generated the most discussion at the work sessions are further described below.

**Item 14:** Awnings in DRDD and LGVCO (Pages 12 and 15-17 of Attachment 2): In both the Downtown (DRDD) and Lake Grove (LGVCO) design districts, awnings are required in many locations over windows and doors. However, the terminology in these standards is not clear and the amendments propose to clarify the standards. For instance, in the DRDD, awnings are required over “window walls”, which is not a defined term. In LGVCO, awnings are required over windows that “abut” a public frontage; the term “abut” is defined as “contiguous to” and thus if a building is set back from the property line, its walls do not “abut” a frontage. These standards have been clarified to apply to windows and doors that face a public sidewalk (DRDD, LGVCO) or plaza or walkway (LGVCO); awnings would not be required on residential windows or windows that abut landscaping.

**Item 16:** Courtyards in DRDD (Pages 13-14 and 16 of Attachment 2): Ordinance 2651, effective in February 2015, created clear and objective design standards for multi-family, residential mixed-use, and townhome development in the DRDD. During review of a recent townhome development in DRDD, staff noted that the discretionary DRDD

standards require that courtyards visible from the public street be provided, but in the clear and objective DRDD standards, courtyards are optional and the related design standards apply only where courtyards are provided. The original intent of Item 16 was simply to clarify whether courtyards are a requirement or not; however, based on the recent townhome development, the question of whether courtyards should be required on townhome-like (single family attached) development – which typically does not have common areas – was raised. Additionally, it may not be practical or desirable to require small projects to have courtyards. The proposed amendments to the DRDD standards require that courtyards visible from the public street be provided on new commercial, multi-family and residential mixed-use developments. (This is not a requirement that the public have access to private courtyards, but a development could provide publicly accessible courtyards, such as in the Wizer Block development.) The amendment is structured to exempt small projects by requiring courtyards only when a building wall is more than 200 feet in length. Thus, a courtyard will not be required on a lettered (east-west) street with an alley, because the frontage on each side of the alley is 120 feet, but a courtyard would be required if new development is more than half the north-south depth of the block (downtown blocks are 400 feet deep). If an alley is vacated, the courtyard requirement would apply along the lettered street. The images below illustrate the courtyards that have been provided on recent large projects in the DRDD.



Courtyards at 555 2<sup>nd</sup> (left) and Block 137 (above)



Courtyards at Lake View Village

**Item 18:** Tree Mitigation in LGVCO (Page 19 of Attachment 2): The question from the Planning Commission during its review of the prior amendments to the LGVC Overlay in LU 15-0064 was whether the caliper replacement standard is too onerous. From the discussion at the work session on this item, the Commission also questioned why tree removal restrictions were more restrictive on commercial property compared to residential property.

The following legislative history relates to the above questions. Tree Code originally applied only to commercial property and to residential subdivisions, and not to lots developed with single-family dwellings. In time, tree-cutting restrictions were applied to all property within the City. However, the restrictions on tree removal are less restrictive on single family lots; for example, the Type I permit, which allows by right the removal of two trees per year subject to specific standards, is only applicable to developed, single family lots. Relatively healthy trees on all other lots must be reviewed through the Type II process, which is a longer process, involves some

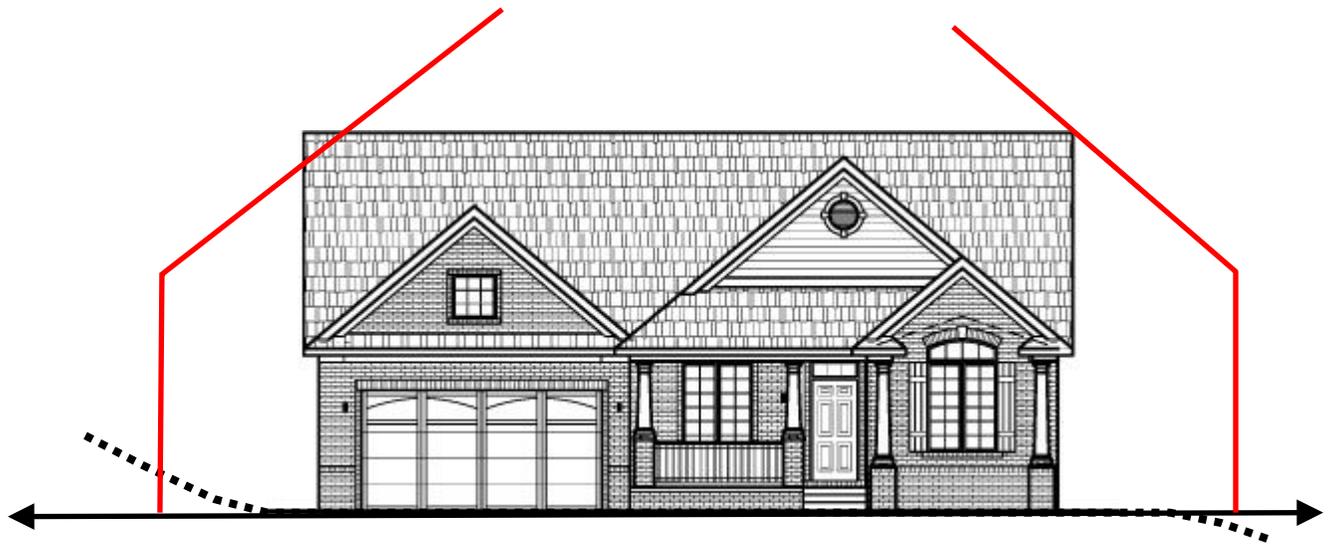
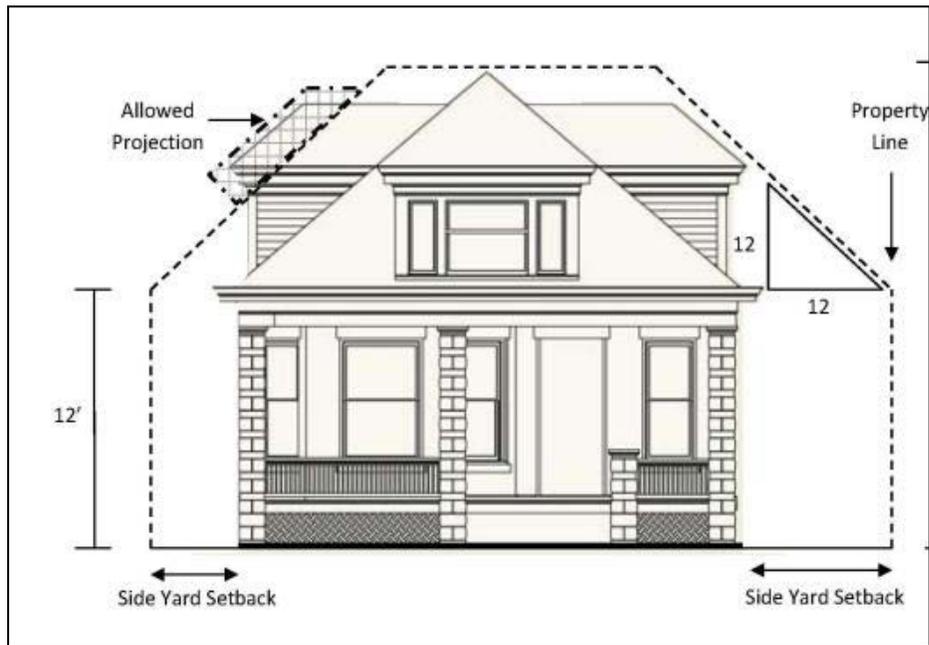
discretion, and requires mitigation. The LGVCO's tree removal and mitigation standards are more restrictive than those that apply to other commercial and industrial properties in the City because the LGVC Plan directed that code standards be adopted to maintain the native coniferous treed character of the district.

Regarding the caliper inch mitigation requirement, the LGVCO code provisions allow off-site planting options or the ability to pay into the Tree Fund if replacement on-site is not feasible. Staff therefore proposes no change to the mitigation standard in Sub ix(2)(c) because the applicant can mitigate off-site on public lands (subject to City approval) or pay into the Tree Fund, if a site too constrained for all on-site mitigation. The City owns several large tracts of land in the vicinity, some of which may be suitable for tree planting. These include Kruse Way (parkway areas) and the natural areas of East and West Waluga, Iron Mountain, and Pennington Parks.

**Item 22: Measuring Points for Street Front and Side Yard Setback Planes (Pages 20-22 of Attachment 2):** These building design standards create a building envelope under which a dwelling must fit (with certain allowed projections). The planes are measured from a point on the ground, extend up 12-20 feet, and then slope back to the center of the lot at either a 6:12 or a 12:12 slope. The Street Front Setback Planes are measured from the front or street side setback lines; the Side Yard Plane is measured from the property line. The Code graphic for the Side Yard Plane is reproduced below (Figure 50.06.001-G: Side Yard Setback Plane). The practice has been to measure these planes from existing or lowered grade, whichever is less; this is how building height is measured. However, if there is a grade change – whether natural or man-made – between the foundation and the front setback or property line, there will be very different building envelopes created depending on whether the grade rises or falls.

The draft amendments require that the finished grade at the foundation be used as the grade elevation for measuring the Street Front and Side Yard Setback Planes (see graphics below). This will prevent situations where a building site is excavated, leaving the measurement point at a higher grade than the foundation grade. Additionally, tying the setback plane to the grade at the foundation ensures that the setback plane relates to the structure, not the grade, which can make odd building envelopes. Maximum height will continue to be measured from existing or lowered grade, whichever is less.

Figure 50.06.001-G: Side Yard Setback Plane



The solid line with arrows is the grade at foundation extended to the property line. The dashed line represents the finished grade. The setback planes (red lines) would be measured from the solid line, i.e., extended grade.

**Item 30: Fences: Combination Fence/Wall (Pages 27-28 of Attachment 2):** The fence standards limit the height of a fence to four feet when the fence is located within 10 feet of the property line abutting a public street. The proposed amendments identify locations and objective design criteria where a fence or fence/wall combination up to six feet in height would be permitted when located within 10 feet of a public street. The intent behind these efforts is to support residents' desire for privacy and noise attenuation along major roads, balanced with the community's interest in maintaining aesthetics. This amendment would also be a process improvement and streamline the Development Code. Enforcement of these two standards requires an inordinate amount of staff time (Code Enforcement and Planning) and violations often easily meet the criteria for a Minor Variance. At the work session in October, the Commission requested that staff return with alternative design standards to consider that could also break up the visual impact of a six-foot fence within 10 feet of a public street in residential zones. As proposed in October, a six-foot fence would be allowed in limited locations if the following design elements were included:

- The top one foot of the fence is at least 50% open (e.g., lattice or other)
- The bottom of the fence is screened by shrubs planted from three gallon containers (minimum) and spaced no more than three feet apart at the time of planting.

Another design option could be to allow a solid fence six feet in height and require that fence segments be staggered by at least 32 inches for every length of 20 feet, or 16 inches for every length of 10 feet (a fence panel is typically 10 feet in width), with landscape screening also provided. For reference, the building design standards for side yard appearance and screening that apply to side walls include options for side wall offsets (16 inches minimum); windows and/or doors must occupy a minimum percentage of the side elevation facing the street. For fences, per the above example, there would be no door or window but the fence would contain breaks or offsets, and landscaping would be required. Below are images of a variety of compliant and non-compliant fences.



Non-compliant six-foot fence within 10 feet of the property line abutting a public street (left) and compliant fence (right)



Staggered fence panels with open design at top.

**Item 34: Pre-Application Waiver (Page 31-32 of Attachment 2):** The purpose of a Pre-Application Conference is to “discuss the proposal, the applicable criteria and the requirements for completing an application.” (LOC 50.07.003.1.e.iii). Staff recommends exempting the Pre-Application Conference requirement for specified small projects where it is not necessary to require a Conference. The applicant may always request a pre-app, as needed.

Based on input from the Planning Commission and public during the Commission’s work session on the proposed amendments, staff recommends the following types of prospective applications be categorically exempt from the Pre-Application Conference:

- Minor Modifications to an approved Development Permit where there is no increase in the intensity of the use and no new building permit would result;
- City projects to construct a non-habitable structure not abutting a residential property; and
- Minor variances to the fence standards when proposed to resolve a Code Enforcement citation.

**Item 36: Similar Use Analysis – Noticing Procedures (Pages 33-39 of Attachment 2):** The text amendments include new references to a Similar Use Analysis and its noticing procedures. A Similar Use Analysis is processed as a Minor Development, per LOC 50.07.003.14.a.ii(3) (see Exhibit F-1). It is a determination by the City Manager that a use which is not specifically named in the Development Code is an allowed use on a specific property. It is based on an analysis of the use’s intensity, density and off-site impacts, per LOC 50.03.002.1.f, Authorization for Similar Uses. Under this section, an appeal of a Similar Use Analysis is heard by the Planning Commission using the Minor Development notice and hearing process. The proposed amendments clarify the noticing and appeal process for Similar Use Analyses in LOC 50.07.003, Review Procedures, but do not alter the process or its classification as a Minor Development. The Commission had expressed concern that a Similar Use Analysis could apply to all properties in the same zone(s) as the subject property, and questioned whether notice of the decision should be made city-wide. A Similar Use Analysis has been determined by the State to be a quasi-judicial decision under ORS 227.160, and the decision is binding only on the subject property and thus does not apply to all properties in the city in the same zone. Therefore, the noticing requirements for a Similar Use Analysis are not proposed to change.

**Item 38A: Neighborhood Association Appeal Fee Waiver; Documentation (Page 35-36 of Attachment 2):** This amendment is intended to ensure due process and quality control in land use appeals, while maintaining the integrity of the participation of city’s neighborhood associations in the land use hearings. If a Neighborhood Association (NA) appeals a land use decision, the appeal fee, which covers the average expense of staff time for appeal hearing preparation, is waived. For appeals of a staff decision to a hearing body, the appeal fee is \$588; for appeals of a hearing body decision to City

Council, the appeal fee is ½ of the original application fee, but not to exceed \$5,125 (2016 Master Fee Schedule). The proposed amendment would require documentation from the NA that the appeal request was approved or ratified in the manner provided by the association's bylaws or by board or membership vote. This documentation would have to be presented no later than the conclusion of testimony at the public hearing for persons opposing the application. The quickest turn-around between the issuance of a land use decision and a hearing is 34 days, based on the two-week appeal period after a decision is published and the 20-day notice required for a public hearing once an appeal is filed. In reality, the time period for gathering the necessary documentation is greater because the hearing body typically meets only twice per month and only on specific days of the week.

**Item 38B.** At its October 10 work session, the Planning Commission had requested that staff consider including in the public hearing version of the proposal an extension of the waiver of the appeal fees to additional organizations, such as Home Owners' Associations (HOA) or other groups of residents when a minimum number submit a petition. Research on the number of HOAs in the city, whether they are active, and how they can be contacted is ongoing and incomplete at the time this report was finalized. In considering the feasibility of extending the fee waiver beyond City-recognized neighborhood associations, staff has concerns about it undermining the effectiveness and purpose of the city's neighborhood associations. Staff also has concerns about ensuring quality control. Specifically, it could be difficult to confirm the validity of residents' addresses and signatures (on a petition) and to verify that an HOA is functioning according to its bylaws, including confirmation of an HOA vote; there is most likely a wide variety of HOA bylaws and governing structures for these organizations. Alternatively, this issue could be addressed in the Citizen Involvement Guideline, specifically the provisions for what is required of a neighborhood association when some of its members ask it to take a position. Accordingly, the proposed amendments are limited to the existing fee waiver process for Neighborhood Associations.

**Item 43:** Height of Building Definition; Subdivisions (Page 43 of Attachment 2): In most cases, the height of a structure is measured from existing grade (if the grade is not altered or is artificially elevated) or lowered grade (if the grade is artificially lowered). However, for Planned Development (PD) subdivisions, height is measured from the "altered ground surface" that is a result of the PD subdivision approval; this "altered ground surface" could be either raised or lowered grade. All subdivisions, regardless of whether there is a PD overlay or not, are similarly reviewed as minor developments, which by practice of direct referral includes review by the Development Review Commission in a public hearing, where the impacts of grading can be evaluated. Because the review process is the same for both regular and PD subdivisions, the text has been amended to apply this height measurement to all subdivisions.

#### IV. NOTICE OF APPLICATION

A. Newspaper Notice

On November 3, 2016, public notice of the proposed CDC text amendments and Planning Commission public hearing was published in the *Lake Oswego Review*.

B. Measure 56 Notice

Since the proposed text amendments do not change the base zoning classification of property or limit or prohibit land uses previously allowed in the affected zone, notice of the proposal was not required by ORS 227.186 (Measure 56).

C. DLCD Notice

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

#### V. COMPLIANCE WITH APPROVAL CRITERIA

A. City of Lake Oswego Comprehensive Plan

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

**Community Culture – Civic Engagement**

Policies 1, 2, 4 and 5.

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

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

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

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

Findings: The CDC, which implements the Comprehensive Plan, contains requirements for a citizen involvement program which clearly defines the procedures by which the general public will be notified in the on-going land use planning process and enables citizens to comprehend the issues and become involved in decision making. All required notification measures and opportunities for input as specified in the Code were provided during this process, including noticing to all Neighborhood Associations and business organizations. A Public Review Draft was circulated between September 6 and September 26, 2015, 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.

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

**Land Use Planning, Section D Land Use Administration**

Policy D-1.

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

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

Conclusion: The proposal is consistent with this policy.

**Inspiring Spaces and Places**

Goal 1, Policy 7.

Goal 1, Policy 7: *Enhance the unique character of Lake Oswego's neighborhoods and commercial districts as the City grows and changes by adopting plans, codes, guidelines and other implementation measures.*

Findings: The proposed amendments to the awning and courtyard requirements in the Downtown Redevelopment Design District and the Lake Grove Village Center Overlay enhance the unique character of these districts by clarifying the design requirements for awnings and courtyards, which are

traditional features of commercial development and can maintain and enhance the character and design qualities of these commercial districts.

Conclusion: The proposal is consistent with this policy.

## VI. RECOMMENDATION

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

### EXHIBITS

A. Draft Ordinance

A-1 Ordinance 2732, draft 10/28/16

Attachment 2: Community Development Code Amendments, draft 11/02/16

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 [No current exhibits; reserved for hearing use]

F. Written Materials

F-1 Staff Memo from Evan Boone, Similar Use Determination, 11/02/16

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