

ORDINANCE NO. 2658

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE OSWEGO AMENDING LOC SECTIONS 50.05.010 AND 50.07.004 TO CLARIFY AND STREAMLINE SENSITIVE LANDS REGULATIONS WITH REGARD TO UTILITIES, FENCES, LANDSCAPING, LIGHTING, MAP CORRECTIONS, AND DELINEATION OF RESOURCE CONSERVATION (RC) AND RESOURCE PROTECTION (RP) DISTRICTS. (LU 14-0053).

WHEREAS, the City has initiated a request to amend LOC 50.05.010 and 50.07.004, which implement the City's Sensitive Lands Protection Program (Goal 5); and

WHEREAS, the proposed amendment clarifies and streamlines the Sensitive Lands regulations with regard to utilities, fences, landscaping, lighting, map corrections, and delineation of Resource Conservation (RC) and Resource Protection (RP) districts; and

WHEREAS, notice of the public hearings relating to consideration of this Ordinance was duly given in the manner required by law; and

WHEREAS, public hearings were held before the Lake Oswego Planning Commission on November 10, 2014, at which the staff report, testimony, and evidence were received and considered; and

WHEREAS, a public hearing was held before the City Council of the City of Lake Oswego on December 2, 2014, at which the staff report, testimony, and evidence were received and considered;

The City of Lake Oswego ordains as follows:

Section 1. The City Council hereby adopts the Findings and Conclusions attached as Exhibit 1.

Section 2. The Lake Oswego Code, Chapter 50 (Community Development Code) is hereby amended by deleting the text shown by ~~striketrough~~ type and adding new text shown in double underlined type, attached as Exhibit 2. (Sections or subsections within LOC Chapter 50 that are omitted, and not marked for deletion or addition, are neither amended nor deleted by this Ordinance.)

Section 3. Severability. The provisions of this ordinance are severable. If any portion of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.


Enacted at the regular meeting of the City Council of the City of Lake Oswego held on the 16th day of December, 2014.

AYES: Mayor Studebaker, Bowerman, Gudman, Gustafson, Hughes, Jordan, O'Neill

NOES: None

ABSTAIN: None


EXCUSED: None



Kent Studebaker, Mayor


Dated: December 17, 2014

ATTEST:



Catherine Schneider, City Recorder

APPROVED AS TO FORM:



David Powell, City Attorney

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BEFORE THE CITY COUNCIL
OF THE CITY OF LAKE OSWEGO

A REQUEST FOR AMENDMENTS TO LOC
50.05.010 AND 50.07.004

LU 14-0053-1860
CITY OF LAKE OSWEGO

FINDINGS, CONCLUSIONS & ORDER

NATURE OF PROCEEDINGS

This matter came before the Lake Oswego City Council on the recommendation of the Planning Commission to amend LOC sections 50.05.010 and 50.07.004 to clarify and streamline Sensitive Lands regulations with regard to utilities, fences, landscaping, lighting, map corrections and delineation of Resource Conservation (RC) and Resource Protection (RP) Districts.

HEARINGS

The Planning Commission held a public hearing and considered this application at its meeting of November 10, 2014. The City Council held a public hearing to consider the Planning Commission’s recommendation on December 2, 2014.

CRITERIA AND STANDARDS

A. City of Lake Oswego Comprehensive Plan:

- Civic Engagement
 - Policy 1
- Land Use Planning
 - Policies A-1 and A-2
 - Policy B-6
 - Policies D-1 and D-6
- Open Spaces and Natural Areas (Goal 5)
 - Section 1, Policies 1, 2, 3, 4, 5 and 6
 - Section 2, Policies 1, 2, 3, 6 and 14
 - Section 3, Policies
 - Section 4, Policies 1, 4 and 5
- Air, Water and Land Resources Quality (Goal 6)
 - Section 1, Policy 3

B. Metro Urban Growth Management Functional Plan:

Title 13: Nature in Neighborhoods

- 1 C. Oregon Statewide Planning Goals:
2 Goal 1: Citizen Involvement
3 Goal 2: Land Use Planning
4 Goal 5: Natural Resources, Scenic and Historic Areas and Open Spaces
5 Goal 6: Air, Water and Land Resources Only

6 D. Lake Oswego Community Development Code:

7 LOC 50.07.003.16.a	Legislative Decision Defined
8 LOC 50.07.003.16.b	Criteria for a Legislative Decision
9 LOC 50.07.003.16.c	Required Notice to DLCD
10 LOC 50.07.003.16.d.iii	Planning Commission Recommendation Required
11 LOC 50.07.003.16.e	City Council Review and Decision

12 **FINDINGS AND REASONS**

13 The City Council incorporates the staff report dated October 30, 2014, with all exhibits,
14 the November 18, 2014 staff Council Report with all exhibits, and the Findings and Conclusions
15 of the Planning Commission (except where modified by the Council’s supplemental findings) as
16 support for its decision, supplemented by the further findings and conclusions below. If there is
17 any inconsistency between the supplementary matter and the incorporated material, the
18 supplementary matter controls.

19 Following are the supplemental findings and conclusions of this Council:

- 20 1. The City Council finds that the proposed amendments to LOC 50.05.010.5.c.8 (Code Fix
21 #4) and LOC 50.05.010.6.c.1.a (Code Fix #5), should be modified to remove the
22 requirement that plants used for landscaping within RC and RP districts “not require the
23 use of fertilizers, pesticides, or other added chemical or organic materials that can
24 impact water quality.” The Council finds that provision is redundant with other
25 provisions of 50.05.010.5.c.8 and LOC 50.05.010.6.c.1.a, which require that plants used
26 for landscaping within RC and RP districts “Be well-suited to local soils and growing
conditions” and “not be dependent upon long-term irrigation, which can increase
erosion and sedimentation”.
2. The City Council received testimony on LOC 50.07.004.8.b Map Corrections (Code Fix #7)

1 questioning the meaning of “more than a small number of lots”, in regards to legislative
2 map amendments. Under LOC 50.07.003.16.a, “A ‘legislative decision’ is an amendment
3 to the policies, procedures, standards, criteria or map designations of the
4 Comprehensive Plan, and this Community Development Code, unless such amendment
5 applies to a small number of identified properties only or is required to effect a
6 particular development permit application.” [emphasis added] Therefore, the Council
7 finds that the phrase “small number of lots” should be replaced with “small number of
8 identified properties”. The City Council notes that, in a very limited number of cases, it
9 may be necessary for the City to apply the additional factors outlined in case law when
10 deciding if legislative procedures apply. See *Strawberry Hill 4 Wheelers v. Benton Co. Bd.*
11 *of Comm., 287 Or 591, 601 P2d 769 (1979).*

- 12 3. The City Council finds LOC 50.07.004.8.b “Map Corrections” (Code Fix #7) is not to be
13 used to designate new RC / RP districts, or to add properties to existing RC / RP districts.
14 The new text is a modification of the previous section titled “Removing an Overlay
15 District Designation,” and addresses instances where there is an “error in the existence
16 or location of an RC or RP district” by establishing a “map correction” process – meaning
17 removing or altering the size or location of an existing district as designated or
18 delineated on a particular property. This modified text does not create an additional
19 process for adding new RC / RP districts or extending existing districts onto additional
20 properties. As before, LOC 50.07.004.08.a is to be used to designate a new RC / RP
21 district, or to add properties to existing RC / RP districts.
- 22 4. The City Council finds that the Planning Commission’s recommendation regarding LOC
23 50.07.004.d.i.1 (Code Fix #8) should be modified to exclude non-native trees from RC
24 district delineations: “Tree canopy from invasive tree species and non-native tree
25 species, per the City’s Plant List, shall not be included in the measurement of contiguous
26 tree canopy.” Based on testimony from Metro, the Council finds this change does not

1 conflict with the Metro Functional Plan (Title 13).

2 5. The City Council received testimony from a property owner regarding LOC
3 50.07.004.d.i.3 (Code Fix #9). The testimony questioned whether the amended code
4 requires wider stream protection areas. The Council finds the amendment limits the
5 maximum width of a stream protection area, potentially reducing protection areas on a
6 small number of properties containing steep or variable slopes. It also modifies the
7 method of determining an edge of a stream, consistent with Oregon Administrative
8 Rule, while maintaining compliance with the Metro Functional Plan (Title 3).

9 **CONCLUSION**

10 The City Council concludes that, as modified to be consistent with these findings, LU 14-
11 0053 complies with all applicable criteria and should be approved. The Council also concludes
12 that LU 14-0053 should be implemented by enacting proposed Ordinance 2658 as modified to
13 be consistent with these findings.

ORDINANCE NO. 2658/EXHIBIT 2
LU 14-0053 SENSITIVE LANDS 2014 CODE AMENDMENTS

LOC 50.05.010 is hereby amended as follows (new text shown in **bold, double-underlined type**; deleted text shown in ~~strikethrough type~~):

50.05.010 Sensitive Lands Overlay Districts

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2. Applicability

This section applies to all lands designated as RP or RC on the Sensitive Lands Map and Atlas.

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b. Exceptions – General

The provisions in this section shall not apply to:

- i. A resource located within the boundaries of a partition, subdivision, planned development, or lot line adjustment, approved prior to August 21, 1997, if:
 - (1) The resource was identified and protected pursuant to regulations in effect at the time of approval; and
 - (2) The proposed development is in compliance with the conditions protecting the resource imposed at the time of approval. Any modification of the prior approved partition, subdivision, or planned development that would impact or modify any protection measures imposed at the time of original approval shall be subject to the standards and criteria of this section.
- ii. Resource restoration required as a result of violation of this section or pursuant to settlement of a potential enforcement action by the City Manager, subject to City Manager approval of the restoration plan and procedures.
- iii. Routine maintenance and repair of existing legal development, including nonconforming structures and landscaping. **(See also, specific exception for normal or emergency replacement of utility, below.)**

c. Exceptions – Specific

The provisions of LOC 50.05.010, except for the construction standards in LOC 50.05.010.4.d, shall not apply to:

- i. Replacement or vertical expansion of an existing structure within the footprint of that structure.
- ii. **Normal or emergency replacement of a utility that is not closer to a protected water feature than the pre-existing utility. Normal replacement of a**

utility for purposes of this subsection means the replacement is within the same general location or alignment as the pre-existing utility. Replacement of utilities that are within the stream channel or wetland must consider alternative locations; where no practicable alternative location exists, replacement shall occur as described above, subject to the mitigation requirements of LOC 50.05.010.4.e through 50.05.010.4.g. Temporarily disturbed areas must be restored to their original grades and soil permeability, and revegetated with plants identified on the Plant List, pursuant to LOC 50.05.010.4.g.

iii. Alteration, expansion, or replacement of an existing primary dwelling unit where the footprint of the new intrusion is not more than 700 sq. ft. in the RP or RC district and is not closer to a protected water feature than the pre-existing structure.

iiiv. Development that meets all of the following criteria:

(1) Is not located within a wetland or below the top of the bank or stream;

(2) Does not require a grading permit; and

(3) The cumulative total of all development under this subsection 2.c.iii does not exceed 200 sq. ft.

iv. Fences that are meet the following criteria:

~~(1) The fence is not located within a wetland or a stream channel; and,~~

~~(2) If the fence is below the top of the bank of a stream, at least a two-ft. section of every 100 ft. segment or portion thereof is:~~

~~(a) Not less than 12 in. above the ground; and~~

~~(b) Not more than four ft. tall, measured from the ground.~~

vi. Other development that does not remove any native vegetation or create new permanent structures within the RP or RC district.

d. Exceptions for Wetlands, Stream Corridors and Tree Groves Outside of RP or RC District

Wetlands, stream corridors, and tree groves that are not contained within an RP or RC district shall not be subject to the regulations of this section. However, an application for development that impacts a stream corridor or wetland may still be subject to state or federal wetland or stream regulations. Notice of such applications will be sent to the Division of State Lands (DSL) or the Army Corps of Engineers.

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5. Standards Applicable to RC Districts

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c. RC District Development Standards

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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:

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(6) Utilities

Unless exempted by LOC 50.05.010.2.c.ii (normal or emergency replacement of a utility). ~~Public-public~~ or private utilities shall not be placed in or through the RC protection area unless tunneling under a resource where tree roots can be avoided and the functions and values of a resource will be maintained, or there is no other practicable alternative. If allowed to be located within an RC protection area, the applicant shall restore and revegetate the disturbed area with plants identified on the Plant List and mitigation shall be required pursuant to LOC 50.05.010.4.e through 50.05.010.4.g. When applying Step 1 (avoidance) of the mitigation process:

- (a) Sanitary sewer, water, power, gas, telecommunications, cable and storm drain lines shall be maintained in public rights-of-way and routed around significant resources rather than through a resource wherever possible;
- (b) Drainage patterns shall not be altered in the resource area, or if altered, shall be designed and maintained so as not to adversely impact the functions and values of the resource.

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(8) Landscaping

- (a) Plants used for landscaping within a protection area shall:
 - (i) Be ~~adapted~~ well-suited to local soils and growing conditions;
and
 - (ii) Not be dependent on long-term irrigation, which can increase erosion and sedimentation (irrigation necessary for initial

establishment of the plants is not considered long-term irrigation), ~~and~~

~~(iii) Provide food or cover for wildlife.~~

(b) The City shall maintain a Plant List on file in the Planning Division listing species that comply with this subsection. If a plant is listed in the applicable section of the Plant List for resource landscaping, it shall be presumed to comply with subsection 5.c.iii(7) of this section, Resource Enhancement Projects. The Plant List is not intended to be an exclusive listing of allowable landscaping materials, but shall be used as a guideline and may be updated by the City Manager from time to time as new plants in compliance with this section are discovered or become available. An applicant may utilize a plant not on the Plant List as long as it complies with the criteria in this section.

(c) Removal of vegetation identified on the Plant List as appropriate for resource landscaping is not permitted from a protection area, except as otherwise allowed by this section.

(d) New landscaping shall not include any invasive plants on the City's Plant List.

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6. Standards Applicable to RP Districts

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c. RP District Development Standards

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ii. Except as provided in LOC 50.05.010.6.d, Exceptions Where the RP District Prohibits All Reasonable Development Opportunities, all development listed in subsection c.i of this section is subject to environmental review and shall comply with the following standards:

(1) Specific Development Standards

(a) Landscaping

The delineated RP district shall maintain the natural function and character of the resource area, which provides food and shelter for native wildlife. Landscaping within these areas shall therefore comply with the following criteria:

(i) Plants: Plants used for landscaping within the RP district shall:

(A) Be adapted well-suited to local soils and growing conditions;
and

(B) Not be dependent on long-term irrigation, which can increase erosion and sedimentation (irrigation necessary for initial establishment of the plants is not considered long-term irrigation); ~~and~~

~~**(C)** Provide food or cover for wildlife.~~

(ii) The City shall maintain a Plant List listing species that comply with the criteria in this section. If a plant is listed on the Plant List as appropriate for resource landscaping, it shall be presumed to comply with this section. The Plant List is not intended to be an exclusive listing of allowable landscaping materials, but shall be used as a guideline and may be updated by the City Manager from time to time as new plants in compliance with this section are discovered or become available. An applicant may utilize a plant not on the Plant List as long as it complies with the criteria in this section.

(iii) Removal of vegetation identified on the Plant List as appropriate for resource landscaping is not permitted from an RP district except as otherwise allowed in this section.

(iv) New landscaping within the RP district shall not include any invasive plants ~~include plants~~ on the City's Plant List.

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(e) Structures, Parking Areas, Pathways, and Driveways, ~~and Lighting~~

(i) Construction Setbacks

(A) Except as provided in subsection 6.c.ii(1)(d) of this section, structures, parking areas, active use recreation facilities, hard surfaced pathways, streets and driveways shall be set back at least ten ft. from an RP district to prevent construction impacts to the RP district.

(B) In addition to complying with other applicable standards, accessory structures, patios, decks, and similar outdoor facilities, ~~and lighting~~ shall be set back three ft. from an RP district.

(C) Passive use recreation facilities, such as soft surface trails and pedestrian bridges, may be located within the RP district. Any disturbed land area shall be restored with plants as described on the Plant List.

~~(D) Exterior lights other than low-voltage landscape lights with power less than 15 volts and on circuits limited to 25 amps are not allowed within the RP district; any exterior lighting outside of the RP district shall be hooded and positioned so that light does not shine directly into the RP district.~~

LOC 50.07.004 is hereby amended as follows (new text shown in **bold, double-underlined type**; deleted text shown in ~~strikethrough type~~):

50.07.004 Additional Submittal Requirements

8. Sensitive Lands Overlay Districts

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b. Map Corrections

A map correction may be initiated by the City Manager or the owner of any lot containing an RC or RP district.

i. Within 45 days of receiving a property owner request regarding a possible error in the existence or location of an RC or RP district, the City Manager shall advise the affected property owner(s) in writing of the applicable procedure to process the request.

ii. Where the map correction is initiated by the City Manager, the City Manager shall notify the property owner(s) in writing of the proposed corrective action.

iii. Based on information provided by the property owner, as applicable, and such maps, aerial photographs, prior resource delineations, and studies or reports prepared by qualified professionals, etc., the City Manager shall select the applicable review procedure, which shall be:

(a) Ministerial Development Decision, for corrections to scrivener's errors. The Sensitive Lands Atlas shall be updated with each correction and the updates shall be reported to the Planning Commission and City Council not less than annually;

(b) Minor Development Decision, for map corrections other than scrivener's errors; or

(c) Legislative Decision, for map corrections affecting more than a small number of identified properties.

iv. The reviewing authority shall approve a map correction, including the removal or re-delineation of a resource, as applicable, where the applicant demonstrates one of the following is met:

(a) That the inventoried resource no longer exists because it was lawfully filled, culverted, logged, or developed;

(b) The boundaries of the resource have changed since adoption of the resource inventory;

(c) There was a mistake in the analysis used in the designation of the resource and it does not meet the criteria for designation under LOC 50.07.004.8.a, and a re-application of the ESEE analysis demonstrates that the designation is no longer justified;

(d) There was a mistake in the location, size, or configuration of the designation, including instances where no portion of the resource is on the subject lot; or

(e) The Tree Grove is an Isolated Tree Grove not located on public open space, on a private designated open space tract, or on property brought into the Urban Growth Boundary after July 10, 2012, and removing the RC District complies with Metro Code Section 3.07.1330 (A) (2).

v. A map correction shall not be approved as a result of damage caused by the property owner, another party, or other than natural causes.

b. Removing an Overlay District Designation

i. In order to remove an overlay District designation the review body shall find that one of the following criteria is met:

(1) As a result of natural occurrences or evolution the resource has been degraded to the extent that the subject property no longer meets the criteria for designation found in LOC 50.07.004.8.a.iv and (v), above, and a re-application of the ESEE analysis demonstrates that the designation is no longer justified; or

(2) There was a mistake in the analysis of quality or quantity in the original designation of the resource and a re-application of the ESEE analysis demonstrates that the designation no longer meets the criteria; or

~~(3) There was a mistake in the location of the original designation of the resource, such that no portion of the resource was on the subject property; or~~

~~(4) The Tree Grove is an Isolated Tree Grove not located on public open space, on a private designated open space tract, or on property brought into the Urban Growth Boundary after July 10, 2012, and removing the RC District complies with Metro Code Section 3.07.1330 (A) (2).~~

~~ii. An overlay district designation shall not be removed as a result of damage caused by the property owner, another party, or other than natural causes.~~

~~iii. A removal application pursuant to subsection b.i.(1),~~2~~ or b.i.(2), above, shall be processed in the same manners as a designation application pursuant to LOC 50.07.008.a.~~

~~iv. An Overlay District Designation may be removed pursuant to b.i.(3), above, by a delineation on the subject site in accordance with LOC 50.07.004.8.d and a finding that there is not now nor was there any resource located upon the site at the time of designation.~~

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50.007.004 d. Delineation of Streams, Wetlands, and Tree Groves

i. Preparation/Criteria

Except as provided in subsection 8.d.iv of this section, an applicant for a development subject to environmental review shall first delineate the stream, wetland, or tree grove. A delineation is a more precise, site specific determination of the location of the tree grove or water resource prepared by a qualified professional. The delineation shall include a map showing the delineated boundary to plus or minus two ft. The delineation map shall also show the protected riparian area if required for the particular resource. Resource boundaries shall be delineated as follows:

(1) Tree Groves

The RC district shall be delineated as follows:

The boundary of a tree grove shall be measured at the outer edge of a contiguous tree canopy based on aerial photos and/or visual field observations, but shall not include any tree canopy that is within a wetland or below the top bank of a stream; and, **Tree canopy from invasive tree species and non-native tree species, per the City's Plant List, shall not be included in the measurement of contiguous tree canopy, and the delineated boundary**

shall not increase the size of the RC district by more than 15 percent from what is designated on the Sensitive Lands Atlas.

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(3) Stream Corridors

A stream corridor boundary shall be measured or delineated based on topographic maps, hydrology maps, and/or field observations, pursuant to Figure 50.07.004-A: Wetland and Stream Corridor Measurement; **provided that the protected riparian area shall not extend more than 200 feet from the edge of the ordinary high water line of the stream corridor. The ordinary high water line is defined according to Oregon Administrative Rule (OAR) 141-085-0510.**