

ORDINANCE 2797

AN ORDINANCE OF THE LAKE OSWEGO CITY COUNCIL AMENDING LOC CHAPTER 50 (COMMUNITY DEVELOPMENT CODE) FOR THE PURPOSE OF CLARIFYING AND UPDATING VARIOUS PROVISIONS (2018), INCLUDING INCREASING SETBACKS ON LOTS ZONED HIGH DENSITY WHEN THEY ABUT LOTS THAT WILL BE ZONED LOW DENSITY UPON ANNEXATION; SOLAR CODE TREE TERMINOLOGY; SOLAR ACCESS PERMIT REMOVAL; UTILITY UNDERGROUNDING EXEMPTIONS, AND ADOPTING FINDINGS (LU 18-0035).

WHEREAS, through the application of the Community Development Code and related code provisions, the public and Planning Division staff have found that some sections of the Lake Oswego Code, Chapter 50 (Community Development Code) could be improved by removing ambiguous and conflicting language, correcting provisions, adding clarifying text which is consistent with past interpretations, and updating the Community Development Code;

The City of Lake Oswego ordains as follows:

Section 1. The City Council hereby adopts the Findings and Conclusions (LU 18-0035), attached as Attachment 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, in Attachment 2. (Sections or subsections within LOC Chapter 50 that are omitted in Attachment 2, 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.

Section 4. Effective Date. As provided in Section 35C of Chapter VII of the Lake Oswego Charter, this ordinance shall take effect on the thirtieth day following enactment.


Enacted at the meeting of the City Council of the City of Lake Oswego held on the 6th day of November, 2018.

AYES: Mayor Studebaker, Gudman, Kohlhoff, O'Neill, Buck, Manz, LaMotte

NOES: None

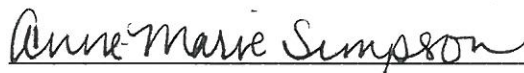
ABSTAIN: None

EXCUSED: None



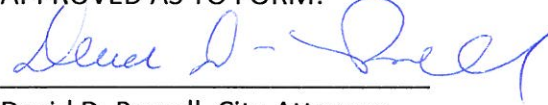
Joe Buck, Council President
Dated: November 8, 2018

ATTEST:



Anne-Marie Simpson, City Recorder

APPROVED AS TO FORM:



David D. Powell, City Attorney

1 LOC 50.11.004 Appendix D, Lake Oswego Master Plant List

2 **HEARINGS**

3 The Planning Commission held public hearings and considered this application at its
4 meetings on October 8 and October 22, 2018. The Commission adopted its Findings,
5 Conclusion and Order recommending approval of LU 18-0035 on October 22, 2018.

6 The City Council held a public hearing and considered the Planning Commission’s
7 recommendation on November 6, 2018.

8
9 **CRITERIA AND STANDARDS**

10 A. City of Lake Oswego Comprehensive Plan:

11 Community Culture – Civic Engagement, Policies 1, 2, 4 and 5
12 Land Use Planning – Land Use Administration, Policy D-1
Inspiring Spaces and Places: Goal 1, Policy 1(a)

13 B. City of Lake Oswego Community Development Code:

14	LOC 50.07.003.16.a	Legislative Decisions Defined
15	LOC 50.07.003.16.b	Criteria for Legislative Decision
16	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

17 **FINDINGS AND REASONS**

18 The City Council incorporates the staff report dated August 30, 2018 and the staff memo
19 dated October 4, 2018 for LU 18-0035, with all exhibits, and the Findings and Reasons in the
20 Planning Commission’s October 22, 2018 Findings, Conclusions and Order, as support for the
21 City Council’s decision.

22 **CONCLUSION**

23 The City Council concludes that LU 18-0035, as recommended by the Planning
24 Commission, complies with all applicable criteria and should be approved. The Council also
25 concludes that proposed Ordinance 2797, which implements LU 18-0035, should be enacted.

50.04.001 DIMENSIONAL TABLE

3. RESIDENTIAL HIGH DENSITY ZONES

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e. Yard Setback – Additional Standards

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iii. Abutting Low Density Residential

Where a lot zoned R-0, 2, or 3 abuts a lot zoned R-6, 7.5, 10, or 15, or abuts a lot that would be zoned R-7.5, 10 or 15 upon annexation into the City per LOC 50.01.004.5, the building on the R-0, 2, or 3 lot shall be set back from the common line a distance equal to the required yard setback for the zone in Table 50.04.001-13 or the height of the primary building on the R-0, 2, or 3 lot, whichever is greater.

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50.04.003 EXCEPTIONS, PROJECTIONS, AND ENCROACHMENTS

6. SPECIAL DETERMINATION OF YARDS AND YARD REQUIREMENTS; SETBACK PLANE EXEMPTION

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b. Through Lots

Unless the prevailing front yard pattern on abutting lots on the same block face indicates otherwise, front yards shall be provided on all street frontages. Where one of the front yards that would normally be required on a through lot is not in keeping with the prevailing yard pattern, the City Manager may waive the requirements for the normal front yard and substitute therefor a special yard requirement which shall not exceed the average of the yards provided on abutting adjacent lots.

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50.04.004 SOLAR ADJUSTMENTS

1. EXEMPTIONS FROM SOLAR DESIGN STANDARD

A development is exempt from the requirements of LOC 50.06.007.1.d, Solar Design Standard, if the reviewing authority finds the applicant has shown that one or more of the following conditions apply to the site. A development is partially exempt from LOC 50.06.007.1.d to the extent the reviewing authority finds the applicant has shown that one or more of the following conditions apply to a corresponding portion of the site. If a partial exemption is granted for a given development, the remainder of the development shall comply with the solar access requirements.

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b. Off-Site Shade

The site, or a portion of the site for which the exemption is sought, is within the shadow pattern of off-site features, such as but not limited to structures, topography, or ~~non-exempt~~solar-unfriendly vegetation, which will remain after development occurs on the site from which the shade is originating.

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c. On-Site Shade

The site, or a portion of the site for which the exemption is requested, is:

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- ii. Contains ~~non-exempt~~solar-unfriendly trees at least 30 ft. tall and more than six in. in diameter measured four ft. above the ground which have a crown cover over at least 80% of the site or relevant portion. The applicant can show such crown cover exists using a scaled survey or an aerial photograph. If granted, the exemption shall be approved subject to the condition that the applicant preserve at least 50% of the trees that cause the shade that warrants the exemption. The applicant shall file a note on the plat or other documents in the office of the County Recorder binding the applicant to comply with this requirement. The City shall be made a party of any covenant or restriction created to enforce any provision of this section. The covenant or restriction shall not be amended without written City approval.

2. ADJUSTMENTS TO SOLAR DESIGN STANDARD

The reviewing authority shall reduce the percentage of lots that must comply with LOC 50.06.007.1.d, Solar Design Standard, to the minimum extent necessary if it finds the applicant has shown one or more of the following site characteristics apply:

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c. Existing Shade

~~Non-exempt~~Solar-unfriendly trees at least 30 ft. tall and more than six in. in diameter measured four ft. above the ground have a crown cover over at least 80% of the lot and at least 50% of the crown cover will remain after development of the lot. The applicant can show such crown cover exists using a scaled survey of solar-unfriendly~~non-exempt~~ trees on the site or using an aerial photograph.

- i. Shade from solar-unfriendly~~non-exempt~~ trees is assumed to remain if: the trees are situated in a required setback; or they are part of an existing or proposed park, open space, or recreational amenity; or they are separated from the developable remainder of their parcel by an undevelopable area or feature; or they are part of landscaping required pursuant to LOC

50.06.004, Site Design; and they do not need to be removed for a driveway or other development.

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3. EXEMPTION FROM THE MAXIMUM SHADE POINT HEIGHT STANDARD

The City Manager shall exempt a proposed structure or ~~non-exempt~~solar-unfriendly vegetation from LOC 50.06.007.2.c, Maximum Shade Point Height Standard, ~~and LOC 50.07.004.9.e, Solar Site Plan Required,~~ if the applicant shows that one or more of the conditions in this section exist, based on plot plans or plats, corner elevations or other topographical data, shadow patterns, suncharts or photographs, or other substantial evidence submitted by the applicant.

a. Exempt Lots

When created the lot was subject to LOC 50.04.004.1 and 50.04.004.2, LOC 50.06.007.1.a through ~~de,~~ and LOC 50.07.004.9.d, and was not subject to the provisions of LOC 50.06.007.1.e, Protection from Future Shade.

b. Pre-Existing Shade

The structure or applicable ~~non-exempt~~solar-unfriendly vegetation will shade an area that is shaded by one or more of the following:

- i. An existing or approved building or structure;
- ii. A topographic feature;
- iii. A ~~non-exempt~~solar-unfriendly tree that will remain after development of the site. It is assumed a tree will remain after development if it:

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d. Insignificant Benefit

The proposed structure or ~~non-exempt vegetation~~solar-unfriendly vegetation shades one or more of the following:

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50.05.004 DOWNTOWN REDEVELOPMENT DESIGN DISTRICT

12. STREET, ALLEY AND SIDEWALK DESIGN

Street, sidewalk and alley design shall safely and efficiently provide for vehicular and pedestrian travel while enhancing village character through compliance with the following design standards. These

standards shall apply in addition to any other City requirements for street, alley or sidewalk design. In the event of a conflict, the provisions of this section shall control.

~~a.~~ Compliance with Comprehensive Plan

~~Development shall comply with the Major Street System Policies contained in the Goal 12, Transportation Chapter of the Comprehensive Plan. Pursuant to this element, "A" Avenue and State Street are classified as major arterials, "B" Avenue from State Street to Fifth Street and First through Fifth Streets from "A" to "B" Avenues are classified as major collectors.~~

~~ab.~~ "A" Avenue

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~~bc.~~ Intersection Design

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~~cd.~~ Sidewalks

~~////////////////////~~

~~de.~~ Alleys

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~~f.~~ Undergrounding of Utilities

~~Utilities shall be placed underground where feasible.~~

~~eg.~~ Angle Parking

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13. CLEAR AND OBJECTIVE HOUSING STANDARDS FOR APPROVAL

g. Landscaping and Site Design Requirements

i. Purpose

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~~xiv.~~ Undergrounding of Utilities

~~Overhead utilities shall be placed underground, unless the City Engineer determines that undergrounding is not practical based upon site conditions.~~

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k. Street, Alley and Sidewalk Design

Purpose: Street, sidewalk and alley design should safely and efficiently provide for vehicular and pedestrian travel while enhancing village character through compliance with the following design standards. These standards shall apply in addition to any other City requirements for street, alley or sidewalk design. In the event of a conflict, the provisions of this section shall control.

~~i. Compliance with Comprehensive Plan~~

~~Development shall comply with the Major Street System Policies contained in the Connected Community Chapter of the Comprehensive Plan. Pursuant to this element, "A" Avenue and State Street are classified as major arterials, "B" Avenue from State Street to Fifth Street and First through Fifth Streets from "A" to "B" Avenues are classified as major collectors.~~

ii. "A" Avenue

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iii. Intersection Design

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~~iiiv. Alleys~~

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~~iv. Angle Parking~~

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50.05.005 WEST LAKE GROVE DESIGN DISTRICT

4. STANDARDS APPLICABLE TO THE ENTIRE WLG DESIGN DISTRICT

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~~k. Undergrounding of Utilities~~

~~All public and private utility services shall be placed underground.~~

~~kl. Building Design~~

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~~lm. Street and Pathway Lighting~~

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m. Outdoor Storage

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n. Stormwater Management

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9. CLEAR AND OBJECTIVE HOUSING STANDARDS FOR APPROVAL

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d. Standards Applicable to the Entire WLG Design District

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~~x. Undergrounding of Utilities~~

~~All public and private utility services shall be placed underground.~~

xi. Building Design

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xii. Street and Pathway Lighting

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xiii. Outdoor Storage

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xiiv. Stormwater Management

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50.05.012 UPLANDS R-10 OVERLAY DISTRICT

5. FLAG LOTS

In addition to the standards in Sections 6 and 7 of LOC 50.05.012, the following standards apply to flag lots.

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d. Building and Site Design Standards

i. Building Orientation

There is no building orientation requirement.

ii. Maximum Structure Height

(1) In no case shall the maximum height of structures established pursuant to LOC 50.07.007.2.e.iii exceed 30 feet.

(2) The additional height allowed pursuant to LOC 50.07.007.2.e.iii(4) and LOC 50.04.001.1.g is not permitted.

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50.06.003 CIRCULATION AND CONNECTIVITY

4. STREET CONNECTIVITY

c. Standards for Approval of Development Which Requires the Construction of a Street

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v. Access lanes may be used to serve up to three~~eight~~ dwelling units~~s~~. ~~They shall be designed to provide connections between properties that develop through the partition process.~~

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50.06.004 SITE DESIGN

3. LIGHTING STANDARDS

b. Standards for Approval

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iii. Outdoor Lighting in PF and PNA Zones

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(a) All outdoor lighting shall comply with either the prescriptive option or the performance option, below. The applicant may be required to pay for the services of a qualified professional civil or electrical engineer to review such submittals and the cost thereof shall be an additional fee charged to the applicant.

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(ii) Performance Option

If the lighting is to comply with this performance option, the proposed lighting plan demonstrating compliance with the following standards shall be submitted by the applicant for review and approval by the City Engineer, and the City Engineer’s decision shall be the final decision of the City:

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(B) The maximum light level at any property line shall be no greater than the values in Table 50.06.004-4: Performance Method, as evidenced by a complete photometric analysis including horizontal illuminance of site and vertical illuminance on the plane facing the site up to the mounting height of the luminaire mounted highest above grade. The City Engineer may accept a photometric analysis report, demonstration or sample, or other satisfactory confirmation that the luminaire meets the shielding requirements of Table 50.06.004-1: Maximum Wattage and Required Shielding. Luminaires shall not be mounted so as to permit aiming or use in any way other than the manner maintaining the shielding classification required herein.

Exception 1: If the property line abuts a public right-of-way, the analysis may be performed at the property boundary across the public right-of-way from the site.

~~Exception 2: If the abutting property owner agrees in writing to waive subsection 3.b.iii(7)(a)(ii)(B) of this section, and such consent is recorded in the official records of the county in which the abutting property is located, the maximum light level analysis shall be measured at the setback line of the abutting parcel.~~

Exception ~~2~~3: If unique site characteristics (topography, differences in grade between the subject property and the abutting parcel) make compliance impractical with the maximum light level requirements, an exception to this subsection may be granted by the City Engineer. The City Engineer may impose conditions of approval to mitigate any negative impacts resulting to the abutting parcel, based on best lighting practices and available lighting technology.

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v. Street Lighting

(1) Street lighting installations shall achieve criterion values listed in Table 50.06.004-6.

TABLE 50.06.004-6: CITY STANDARD CRITERIA FOR STREET AND ROADWAY LIGHTING (FOOT-CANDLES – FC)					
	PNA (Natural Area) Zone	R-3, R-5, R-7.5, R-6, R-10, and R-15, R-DD, PNA (Developed Park Area), PF and R-W Zones	R-0, R-2, WLG R-2.5, I, IP, and CR&D Zones	GC, NC, MC, EC, HC, OC, WLG OC, WLG RMU and CI Zones	Special Exception LOC 50.06.004.3.b.iv
LOCAL STREETS	Not permitted	<u>Light Levels at Intersections only*</u>	<u>Light Levels</u>	<u>Light Levels</u>	<u>Light Levels</u>
Avg: Light Level	N/A	0.3 fc	0.3 fc	0.4 fc	0.4 fc
Avg: Min. Uniformity	N/A	6:1	6:1	6:1	6:1
Max: Min. Uniformity	N/A	40:1	40:1	40:1	40:1
NEIGHBORHOOD COLLECTORS	Not permitted	<u>Light Levels at Intersections only*</u>	<u>Light Levels</u>	<u>Light Levels</u>	<u>Light Levels</u>
Avg: Light Level	N/A	0.3 fc	0.4 fc	0.6 fc	0.6 fc
Avg: Min. Uniformity	N/A	4:1	4:1	4:1	4:1
Max: Min. Uniformity	N/A	20:1	20:1	20:1	20:1
MAJOR COLLECTOR/MINOR ARTERIAL	Not permitted	<u>Light Levels</u>	<u>Light Levels</u>	<u>Light Levels</u>	<u>Light Levels</u>
Avg: Light Level	N/A	0.3 fc	0.4 fc	0.6 fc	1.0 fc
Avg: Min. Uniformity	N/A	4:1	4:1	4:1	4:1
Max: Min. Uniformity	N/A	20:1	20:1	20:1	20:1
MAJOR ARTERIALS	Street lighting standards for major arterials shall be determined by the City Engineer, who may require an independent engineering study to determine the appropriate lighting system.				
* Luminaires only within 150 ft. of the center point of an intersection.					

(a) Exception: Federal or state requirements that require a higher illumination value than required by this Code.

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50.06.007 SOLAR ACCESS

1. SOLAR ACCESS FOR NEW DEVELOPMENT

b. Applicability

The solar design standard in LOC 50.06.007.1.d shall apply to subdivision applications ~~for a development that~~ create lots intended for single-family detached dwellings in any zone, except to the extent the reviewing authority finds that the applicant has shown one or more of the conditions listed in LOC 50.04.004.1, Exemptions from Solar Design Standard, and LOC 50.04.004.2, Adjustments to Solar Design Standard, exist and exemptions or adjustments provided for therein are warranted.

~~**c. Development Review**~~

~~The review procedures for a solar access permit are located in LOC 50.07.004.9, Solar Access Permit.~~

cd. Solar Design Standard

At least 80% of the lots in a development subject to this section shall comply with one or more of the options in this section. In order to be included in the 80% requirement a lot must also comply with LOC 50.06.007.1.e.

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ii. Protected Solar Building Line Option

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- (4) There is at least 45 ft. between the protected solar building line and the northern edge of the buildable area of the lot, or habitable structures are situated so that at least 80% of their south-facing wall will not be shaded by structures or ~~non-exempt~~ solar-unfriendly vegetation.

iii. Performance Option

In the alternative, a lot complies with this section if:

- (1) Habitable structures built on the lot will have their long axis oriented within 30° of a true east-west axis and at least 80% of their ground floor south wall protected from shade by structures and ~~non-exempt~~ solar-unfriendly trees; or
- (2) Habitable structures built on the lot will have at least 32% of their glazing and 500 sq. ft. of their roof area which faces within 30° of south and is protected from shade by structures and ~~non-exempt~~ solar-unfriendly trees.

de. Protection from Future Shade

Structures and ~~non-exempt~~solar-unfriendly vegetation must comply with the Solar Balance Point provisions, LOC 50.06.007.2, for existing lots if located on a lot that is subject to the solar design standard in LOC 50.06.007.1.d, or if located on a lot south of and adjoining a lot that complies with the solar design standard.

2. SOLAR BALANCE POINT

b. Applicability

This section applies to an application for a building permit for all structures in the R-7.5, R-10 and R-15 zones and all single-family detached structures in any zone, except to the extent the City Manager finds the applicant has shown that one or more of the conditions listed in LOC 50.04.004.3, Exemption from the Maximum Shade Point Height Standard, and LOC 50.04.004.4, Adjustments to the Maximum Shade Point Height Standards, exists, and exemptions or adjustments provided for therein are warranted. In addition, ~~non-exempt~~solar-unfriendly vegetation planted on lots subject to the provisions of LOC 50.06.007.1.e, Protection from Future Shade, shall comply with the maximum shade point height standard. Solar plan procedures are located in LOC 50.07.004.9.

c. Maximum Shade Point Height Standard

The height of the shade point shall comply with either subsection 2.c.i or ii of this section.

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ii. Performance Option

The proposed structure, or applicable ~~non-exempt~~solar-unfriendly vegetation, will shade not more than 20% of the south-facing glazing of existing habitable structure(s), or, where applicable, the proposed structure or ~~non-exempt~~solar-unfriendly vegetation complies with LOC 50.06.007.1.d.ii or iii. If the protected solar building line is used, ~~non-exempt~~solar un-frieindly trees and the shade point of structures shall be set back from the protected solar building line two and one-half ft. for every one ft. of height of the structure or of the mature height of ~~non-exempt~~solar-unfrieindly vegetation over two ft.

d. Analysis of Allowed Shade on Solar Feature

- i. The applicant is exempt from this section if the lot(s) south of and adjoining the applicant’s property is exempt from LOC 50.06.007.2.c, Maximum Shade Point Height Standard.
- ii. Applicants shall be encouraged to design and site a proposed habitable structure so that the lowest height of the solar feature(s) will not be shaded by buildings or ~~non-exempt~~solar-

unfriendly trees on lot(s) to the south. The applicant shall complete the following calculation procedure to determine if the solar feature(s) of the proposed structure will be shaded. To start, the applicant shall choose which of the following sources of shade originating from adjacent lot(s) to the south to use to calculate the maximum shade height at the north property line:

- (1) Existing structure(s) or ~~non-exempt~~solar-unfriendly trees; or
- (2) The maximum shade that can be cast from future buildings or ~~non-exempt~~solar-unfriendly trees, based on Table 50.06.007-3. If the lot(s) to the south can be further divided, then the north-south dimension shall be assumed to be the minimum lot width required for a new lot in that zone.

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50.06.008 UTILITIES

4. STANDARDS FOR CONSTRUCTION

a. Utility easement widths shall be the minimum width possible to facilitate utility installation and maintenance, and shall be a minimum of ~~ten~~ fifteen ft. (~~five~~7.5 ft. on each side) in width on easements not adjacent to a street right-of-way per LOC 42.18.1030.1.c, unless otherwise approved by the City Engineer.

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d. Utilities to the development and existing utilities along the development’s street frontage shall be installed underground {unless exempted by the City Manager for any of the following reasons}:

i. ~~Specific exemptions are as follows:~~

~~(1)~~i. Developments which need multi-phase voltages or high kilo volt amperes (kVA) demands may develop with pad transformers where underground transformers are not feasible. Pad mounted transformers shall be buffered from sight by landscaping or other suitable methods.

~~(2)~~ii. Pad mounted transformers are allowed in subdivisions ~~major single-family developments~~, but shall be buffered from sight by landscaping or other suitable methods.

~~(3)~~iii. Above ground telephone and cable television junction boxes are allowed.

iv. Accessory Dwelling Units (ADUs): No undergrounding of existing or new utilities along street frontages is required. Undergrounding of new on-site utilities is required for ADUs that add floor

area. (ADU) Developments: Existing and new utilities along street frontage are exempt, but new facilities on-site to the ADU shall be installed underground.

v. Remodel of Structures: No undergrounding of existing or new utilities along street frontages is required. Undergrounding of new on-site utilities is required for building additions that add floor area, per LOC 45.09.075.

vi. Land Division in Residential Zone: If the parcel of land that is the subject of a land division ("parent parcel") is less than four times the minimum lot area for the residential zone (regardless of the actual number of lots created by the land division), existing utilities along the street frontage are exempt, but new utilities to development within the area of the parent parcel shall be installed underground.

vii. Deferred Undergrounding: Any requirement to underground existing utilities along the street frontage of a development may be deferred by the City Manager upon finding that undergrounding of utilities is not practicable at the time. In lieu of then undergrounding, the owner shall execute a covenant, approved by the City Attorney, and recorded in the official records of the County where the real property is located, binding upon the parcels created by the land division of the parent parcel, and any later land divisions of those parcels:

(1) Waiving the right to remonstrate regarding the formation of a local improvement district to underground utilities; and

(2) Obligating the owner(s) to underground existing utilities along the frontage of the parent parcel when the City Manager determines that it is practicable to underground the frontage utilities. The covenant shall provide that the cost of undergrounding is a joint and several obligation the owner(s), and shall provide for the right of any owner to perform the undergrounding and to lien the other properties for the cost. [If the owner(s) fail to perform the undergrounding as required, the City shall have the right to undertake the undergrounding and to lien all properties jointly and severally for the cost of the undergrounding, including an additional 20% for administrative cost.]

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50.07.003 REVIEW PROCEDURES

1. APPLICATION

a. Application for Development

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g. Determination of Completeness

- i. The purpose of this subsection 1.g.i and subsections 1.g.ii and iii of this section is to codify the "120-Day Rule" statutory maximum review period in the applicable ORS 197.311 (Final Action on Application for Certain Residential Developments Required Within 100 Days) or 227.178 (Final Action on Certain Applications Required Within 120 Days) (referred to herein as the "Maximum Review Period Rule.") In the event of a difference in procedure for determining when an application is complete, the provisions of then ORS 197.311 or 227.178 shall supersede any inconsistent provisions of this subsection 1.g.i, and subsections 1.g.ii and iii of this section. This subsection 1.g.i, and subsections 1.g.ii and iii of this section, are applicable only to those minor and major development applications that are subject to the requirements of the ~~120-Day Rule~~ Maximum Review Period Rules under state law.

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- (3)** Written notice from the applicant is submitted that none of the missing information will be provided.

The applicant shall have 180 days to complete the application.

If the City Manager fails to mail notice of the determination within 30 days from the date of filing of an application the application shall be deemed complete on the 31st day following filing of the application for the purposes of the applicable Maximum Review Period 120-Day Rules.

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- iii. A final decision on an application, including resolution of all appeals, shall be rendered within the applicable Maximum Review Period Rules ~~120 days~~ after the application is deemed complete pursuant to ORS 197.311 or 227.178 (referred to herein as the "120-Day Rule").
- iv. Nothing in this section shall be deemed to be a limitation on the City's ability to render a final decision on a land use application after the expiration of the applicable Maximum Review Period Rule ~~120 days~~.

h. Extensions or Continuances

- i. Extension to File Completed Application. The applicant for a major or minor development may request one additional 180-day extension for filing a complete application.

[**Editor's Note:** ORS 227.178(3), the statute that this subsection is based on, declares the application void if the information or a request to proceed based upon the application as previously submitted is not submitted by the 180th day. The City Attorney's Office concludes that this subsection is therefore superseded by ORS 227.178(3), and no extensions to the 180-day "additional information" period are permissible.]

- ii. Extension to Complete Review and Decision on Application. The applicant for a major or minor development may request in writing a specified period of time for a continuance of review of a complete application. A request for an extension or continuance shall be deemed a waiver of the applicable Maximum Review Period Rule~~120-day final action~~ deadline contained in ORS 227.178 for the period of the extension or continuance, and for any additional time required for rescheduling or re-noticing review proceedings. The total of all extensions for review of a complete application may not exceed 245 days.

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4. HEARINGS

a. Conduct of the Hearing

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- xi. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present addition evidence or testimony regarding the application. The hearing body shall grant such request by continuing the hearing pursuant to subsection 4.a.xi(1) of this section or leaving the record open for additional written evidence or testimony pursuant to subsection 4.a.xi(2) of this section.

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(3) A continuance or extension granted pursuant to this section shall be subject to the applicable Maximum Review Period~~120-Day Rule (ORS 227.178)~~, unless the continuance or extension is requested or agreed to by the applicant.

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c. Testimony, Exhibits, and Other Evidence

- i. Any person may present testimony at public hearing before a hearing body on a major development application or appeal of a minor development decision.
- ii. Any person may submit exhibits or written comments prior to or at the public hearing. Written comments or exhibits submitted prior to the public hearing must be received by the City Manager by noon~~5:00~~ p.m. on the day of the scheduled hearing to be submitted by staff at the hearing. Written comments or exhibits submitted at the hearing must be filed with the recording secretary and placed before the hearing body. Exhibits or written comments that are merely referred to in testimony but which are not placed before the hearing body pursuant to this section shall not become part of the record of the proceedings.

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f. Continuances

- i. The hearing body shall continue a public hearing or leave the record open when required to do so pursuant to LOC 50.07.003.4.a.xi.
- ii. The hearing body may elect to continue a hearing one or more times on its own motion or at the reasonable request of a party. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of the applicable Maximum Review Period~~120-Day Rule (ORS 227.178)~~. If the initial evidentiary hearing has not been completed pursuant to LOC 50.07.003.4.a, the continued hearing shall resume at the point in the proceedings at which the hearing was continued. If the initial evidentiary hearing has been concluded and the hearing body desires a continuance to reopen the record for additional testimony, the continued hearing shall be conducted as provided in subsection 4.f.iii of this section. In the later case, the hearing body may limit evidence or testimony to a particular issue or issues, but any person shall be allowed to raise new issues which relate to the new evidence, testimony or criteria for decision-making for which the hearing body continued the hearing.

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7. APPEALS

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m. Continuances

- i. The Council may elect to continue a hearing one or more times on its own motion or at the reasonable request of a party. No continuance shall be granted at the request of the applicant unless the applicant waives the applicable Maximum Review Period~~120-Day Rule~~ in writing or on the record. If the hearing has not been completed pursuant to LOC 50.07.003.7.j, the continued hearing shall resume at the point in the proceedings at which the hearing was continued. If the hearing has been concluded and the Council desires a continuance to reopen the hearing for additional testimony, the continued hearing shall be conducted as provided in subsection 7.m.ii of this section. In the later case, the Council may limit testimony to a particular issue or issues. If the appeal hearing has been concluded and the Mayor has returned the matter to the table for deliberations, the Council may continue deliberations to a date, time and place certain.

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50.07.004 ADDITIONAL SUBMISSION REQUIREMENTS

9. SOLAR ACCESS PERMIT

a. Purpose

The purpose of this article is to protect solar access to solar features on lots designated or used for a single family detached dwelling under some circumstances. It authorizes owners of such lots to apply for

~~a permit that, if granted, prohibits solar features from being shaded by certain future vegetation on and off the permittee's site.~~

~~b. Applicability~~

~~An owner or contract purchaser of property may apply for and/or be subject to a solar access permit for a solar feature if that property is in a R-7.5, R-10 or R-15 zone, or is or will be developed with a single-family dwelling. The City's decision whether or not to grant a solar access permit is intended to be ministerial and not subject to a public hearing.~~

~~c. Development Review~~

~~A solar access permit shall be processed pursuant to the ministerial development decision process in LOC 50.07.003.13.~~

~~d. Solar Access Submission Requirements~~

~~An application for approval of a development subject to this section shall include:~~

~~i. Maps and text sufficient to show the development complies with the solar design standards, except for lots for which an exemption or adjustment is requested, including at least:~~

~~(1) The north-south lot dimension and front lot line orientation of each proposed lot.~~

~~(2) Protected solar building lines and relevant building site restrictions, if applicable.~~

~~(3) For the purpose of identifying exempt trees, a map showing existing trees at least 30 ft. tall and over six in. diameter a point four ft. above grade, indicating their height, diameter and species, and stating that they are to be retained and are exempt.~~

~~(4) Copies of all private restrictions relating to solar access.~~

~~ii. If an exemption or adjustment to LOC 50.06.007.1.d is requested, maps and text sufficient to show that given lots or areas in the development comply with the standards for such an exemption or adjustment in LOC 50.04.004.1, Exemptions from Solar Design Standard, or LOC 50.04.004.2, Adjustments to Solar Design Standard, respectively.~~

~~iii. The applicant shall file a note on the plat or other documents in the office of the County Recorder binding the applicant and subsequent purchasers to comply with the future shade protection standards in this section. The City shall be made a party of any covenant or restriction created to enforce any provision of this section. The covenant or restriction shall not be amended without written City approval.~~

~~e. Solar Site Plan Required~~

~~An applicant for a building permit for a structure subject to solar balance point requirements shall submit a site plan that shows the maximum shade point height allowed and the allowed shade on the proposed structure's solar features. If applicable, the site plan also shall show the solar balance point for the structure.~~

~~f. Application Contents~~

~~An application for a solar access permit shall contain the following information:~~

~~i. A legal description of the applicant's lot and a legal description, owners' names, and owners' addresses for lots all or a portion of which are within 150 ft. of the applicant's lot and 54° east and west of true south measured from the east and west corners of the applicant's south lot line. The records of the County Assessor shall be used to determine who owns property for purposes of an application. The failure of a property owner to receive notice shall not invalidate the action if a good faith attempt was made to notify all persons who may be affected.~~

~~ii. A scaled plan of the applicant's property showing:~~

~~(1) Vegetation in the ground as of the date of the application if, when mature, that vegetation could shade the solar feature.~~

~~(2) The approximate height above grade of the solar feature, its location, and its orientation relative to true south.~~

~~iii. A scaled plan of the properties on the list required in subsection 9.f.i of this section showing:~~

~~(1) Their approximate dimensions; and~~

~~(2) The approximate location of all existing vegetation on each property that could shade the solar feature(s) on the applicant's property.~~

~~iv. For each affected lot, the requested solar access height limit. The solar access height limit is a series of contour lines establishing the maximum permitted height for non-exempt vegetation on lots affected by a solar access permit. The contour lines begin at the bottom edge of a solar feature for which a permit is requested and rise in five-ft. increments at an angle to the south not less than 21.3° from the horizon and extend not more than 54° east and west of true south.~~

~~Notwithstanding the preceding, the solar access height limit at the northern lot line of any lot burdened by a solar access permit shall allow non-exempt vegetation on that lot whose height causes not more shade on the benefited property than could be caused by a structure that complies with LOC 50.06.007, Solar Access, for existing lots.~~

~~v. The required fee.~~

- ~~vi.~~ If available, a statement signed by the owner(s) of some or all of the properties to which the permit will apply if granted verifying that the vegetation shown on the plan submitted pursuant to subsection 9.f.iii of this section accurately represents vegetation in the ground on the date of the application. The City shall provide a form for that purpose. The signed statements provided for herein are permitted but not required for a complete application.

~~g.~~ **Approval Standards for a Solar Access Permit**

The City Manager shall approve an application for a solar access permit if the applicant shows:

- ~~i.~~ The application is complete;
- ~~ii.~~ The information it contains is accurate, and
- ~~iii.~~ Non-exempt vegetation on the applicant's property does not shade the solar feature.

~~h.~~ **Duties Created by Solar Access Permit**

- ~~i.~~ A party to whom the City grants a solar access permit shall:

~~(1)~~ Record the permit, legal descriptions of the properties affected by the permit, the solar access height limit, and the site plan required in LOC 50.07.004.9.f.iii with such modifications as required by the City Manager in the office of the County Recorder with the deeds to the properties affected by it, indexed by the names of the owners of the affected properties, and pay the fees for such filing. The recording shall occur within ten days of the date of issuance and the applicant shall notify the City of recording. Failure to record as required by this section shall void the permit;

~~(2)~~ Install the solar feature in a timely manner as provided in LOC 50.07.004.9.k, Expiration and Extension of a Solar Access Permit; and

~~(3)~~ Maintain non-exempt vegetation on the site so it does not shade the solar feature.

- ~~ii.~~ An owner of property burdened by a solar access permit shall be responsible and pay all costs for keeping non-exempt vegetation from exceeding the solar access height limit. However, vegetation identified as exempt on the site plan required in LOC 50.07.004.9.f.iii, vegetation an owner shows was in the ground on the date an application for a solar access permit is filed, and solar friendly vegetation are exempt from the solar access permit.

~~i.~~ **Application Review Process**

- ~~i.~~ Pre-Application Conference: Unless waived by the City Manager, prior to filing an application for a solar access permit, an applicant or applicant's representative shall pay the required fee and meet with the City Manager to discuss the proposal and the requirements for an application. If a

meeting is held, the City Manager shall convey a written summary of the meeting to the applicant by mail within five calendar days of the meeting.

- ~~ii.~~ After the pre-application meeting is held or waived, the applicant may file an application containing the information required in LOC 50.07.004.9.f.
- ~~iii.~~ Within seven calendar days after an application is filed, the City Manager shall determine whether the application is complete and if it is not complete notify the applicant in writing, and specify what is required to make it complete.
- ~~iv.~~ Within 14 calendar days after the City Manager decides an application for a solar access permit is complete the City Manager shall issue a written decision tentatively approving or denying the request, together with reasons therefor, based on the standards of LOC 50.07.004.9.g, Approval Standards for a Solar Access Permit.
 - ~~(1)~~ If the tentative decision is to deny the permit the City Manager shall mail a copy of the decision to the applicant.
 - ~~(2)~~ If the tentative decision is to approve the permit, and the owners of all affected properties did verify the accuracy of the plot plan as permitted under LOC 50.07.004.9.f.vi, the City Manager shall mail a copy of the decision to the applicant and affected parties by certified mail, return receipt requested.
 - ~~(3)~~ If the tentative decision is to approve the permit, and the owners of all affected properties did not verify the accuracy of the plot plan as permitted under LOC 50.07.004.9.f.vi, the City Manager shall send a copy of the tentative decision to the applicant and to the owners of affected properties who did not sign the verification statement pursuant to LOC 50.07.004.9.f.vi by certified mail, return receipt requested. If the City Manager determines that the owners of a given property affected by the permit are not the occupants of that property, then the City Manager also shall send a copy of the notice to the occupants of such property.
 - ~~(a)~~ The notice sent to the applicant shall include a sign that says a solar access permit for the property has been tentatively approved, and that informs readers where to obtain more information about it. The applicant shall be instructed to conspicuously point the sign so it is visible from right-of-way adjoining the property, and to sign and return a form provided by the City Manager certifying that the sign was posted as provided herein not more than 14 days after the tentative decision was mailed.
 - ~~(b)~~ The notice shall include the plot plans required in LOC 50.07.004.9.f.ii and iii, the proposed solar access height limits, and duties created by the permit.

- ~~(e)~~ The notice shall request recipients to verify that the plot plan shows all non-exempt vegetation on the recipient's property, and to send the City Manager comments in writing within 14 calendar days after the tentative decision is mailed if the recipient believes the applicant's plot plan is inaccurate.
- ~~(4)~~ Within 28 days after notice of a tentative decision is mailed to affected parties, the City Manager shall consider responses received from affected parties and/or an inspection of the site, modify the plot plan and the permit to be consistent with the accurate information, and issue a final decision. The City Manager shall send a copy of the permit and solar access height limits to the owners of each property affected by the permit by certified mail, return receipt requested.
- ~~v.~~ If the application is approved, the applicant shall, as required by LOC 50.07.004.9.h.i(1), record in the office of the County Recorder with the deeds to the properties affected by it, the permit, associated solar access height limits, legal descriptions for the affected properties, and the site plan required in LOC 50.07.004.9.f.iii with such modifications as required by the City Manager before the permit is effective.

~~j.~~ Permit Enforcement Process

- ~~i.~~ Enforcement Request. A solar access permittee may request the City to enforce the solar access permit by providing the following information to the City Manager:
 - ~~(1)~~ A copy of the recorded solar access permit and the plot plans submitted with the permit; and
 - ~~(2)~~ The legal description of the lot(s) on which alleged non-exempt vegetation is situated, the address of the owner(s) of that property, and a scaled site plan of the lot(s) showing the non-exempt vegetation; and
 - ~~(3)~~ Evidence the vegetation violates the solar access permit, such as a sunchart photograph, shadow pattern, and/or photographs.
- ~~ii.~~ Enforcement Process. Allowing or permitting non-exempt vegetation to violate the solar access permit is a civil violation and a public nuisance. If the City Manager determines the request for enforcement is complete, he or she shall initiate an enforcement action pursuant to LOC Chapter 34. Provided the City Manager shall not enforce the permit against vegetation the owner of which shows was in the ground on the date the permit application was filed with the City.

~~k.~~ Expiration and Extension of a Solar Access Permit

- ~~i. Expiration. Every permit issued by the City Manager under the provisions of this section shall expire if the construction of the solar feature protected by such permit is not commenced within 180 days from the date of such permit, or if the construction of the solar feature protected by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further, that such suspension or abandonment has not exceeded one year. If the permittee does not show construction of the solar feature will be started within 180 days of the date of the permit or the extension, or if the solar feature is removed, the City Manager shall terminate the permit by recording a notice of expiration in the office of the County Recorder with the deeds to the affected properties.~~

- ~~ii. Extension. Any permittee holding an unexpired permit may apply for an extension of the time within which he or she may commence work under that permit when he or she is unable to commence work within the time required by this section for good and satisfactory reasons. The City Manager may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.~~

- ~~iii. A permit shall be void and of no effect if it is not recorded as required by LOC 50.07.004.9.h.i(1).~~

50.10.003 DEFINITIONS

2. DEFINITION OF TERMS

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~~Exempt~~ Solar-Friendly Tree or Vegetation (Solar Access)

The full height and breadth of vegetation that the City Manager has identified as "solar friendly" and listed in the "Solar Friendly Trees Report" dated April 1987 as that report may be amended from time to time; and any vegetation listed on a plat map, a document recorded with the plat, or a solar access permit as exempt.

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~~Non-Exempt~~ Solar-Unfriendly Tree or Vegetation (Solar Access)

Vegetation that is not solar-friendly exempt.

50.11.004 APPENDIX D – LAKE OSWEGO MASTER PLANT LIST

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1. Native Plants

The plants below are native to the Willamette Valley. They are adapted to local climate and soils. Planted in the right location, they should thrive with little or no maintenance.

Scientific Name	Common Name
Native Tall Shrubs/Small Trees	
<i>Acer circinatum</i>	Vine maple
////////////////////	////////////////////
<i>Rubus spectabilis</i>	Salmonberry
<i>Sambucus cerulea</i>	<u>Blue elderberry</u>
<i>Sambucus racemosa</i>	<u>Red elderberry</u>
<i>Vaccinium parvifolium</i>	<u>Red huckleberry</u>
<i>Vaccinium ovatum</i>	<u>Evergreen huckleberry</u>
Scientific Name	Common Name
Native Trees	
<i>Abies grandis</i>	Grand fir
////////////////////	////////////////////
<i>Sambucus cerulea</i>	Blue elderberry
<i>Sambucus racemosa</i>	Red elderberry
<i>Spiraea douglasii</i>	Douglas spiraea
<i>Symphoricarpos albus</i>	Snowberry
<i>Vaccinium parvifolium</i>	Red huckleberry
<i>Vaccinium ovatum</i>	Evergreen huckleberry