

ORDINANCE 2815

AN ORDINANCE OF THE LAKE OSWEGO CITY COUNCIL AMENDING CHAPTER 50 (COMMUNITY DEVELOPMENT CODE) OF THE LAKE OSWEGO CODE FOR THE PURPOSE OF ALLOWING SHORT-TERM RENTAL LODGING USE IN ZONES WHERE TRANSIENT LODGING (HOTELS) ARE NOT CURRENTLY ALLOWED; DELETING “BED & BREAKFAST” FROM PARKING TABLE 50.06.002-3; AND ADOPTING FINDINGS (LU 18-0034).

WHEREAS, notice of the public hearing for consideration of this Ordinance was duly given in the manner required by law; and

WHEREAS, a public hearing before the Planning Commission was held on April 22, 2019, at which the staff report, testimony and evidence were received and considered; and

WHEREAS, the Planning Commission has recommended that LU 18-0034 be approved by the City Council; and

WHEREAS, a public hearing on LU 18-0034 was held before the Lake Oswego City Council on June 2, 2019, at which the staff report, testimony and evidence were received and considered; and

WHEREAS, the Council finds that the Community Development Code should be amended for the purpose of allowing short-term rental lodging use in zones where transient lodging (hotels) are currently not allowed; and

WHEREAS, in order to prompt a timely re-examination of the effects of allowing short-term rental lodging uses, the Council finds it is appropriate to enact a “sunset” provision after which the amendments enacted by this Ordinance, with the exception of the deletion of “bed & breakfast” from Parking Table 50.03.002-3, will automatically expire on July 16, 2021 unless the Council takes further action to extend it;

The City of Lake Oswego ordains as follows:

Section 1. The City Council hereby adopts the Findings and Conclusions (LU 18-0034), 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, or 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. Sunset Provision. The provisions of this Ordinance, with the exception of the deletion of “bed & breakfast” from Parking Table 50.03.002-3, shall be null, void and of no further force and effect, and the Code amendments adopted by this ordinance, with the exception of the deletion of “bed & breakfast” from Parking Table 50.03.002-3, shall be repealed on July 16, 2021

Section 5. Effective Date. As provided in Section 35C of Chapter VII of the Lake Oswego Charter, this ordinance shall take effect on the 30th day following enactment.


Enacted at the meeting of the City Council of the City of Lake Oswego held on the 16th day of July, 2019.

AYES: Wendland, Manz, LaMotte, Nguyen

NOES: Mayor Studebaker, Kohlhoff, O’Neill

ABSTAIN: None

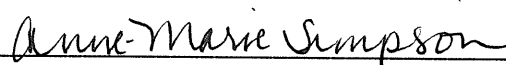
EXCUSED: None



Kent Studebaker, Mayor

Dated: July 17, 2019

ATTEST:



Anne-Marie Simpson, City Recorder

APPROVED AS TO FORM:



David Powell, City Attorney

BEFORE THE CITY COUNCIL
OF THE CITY OF LAKE OSWEGO

A REQUEST TO AMEND CHAPTER 50
COMMUNITY DEVELOPMENT CODE OF THE
LAKE OSWEGO CODE FOR THE PURPOSE OF
ALLOWING SHORT-TERM RENTAL LODGING IN
ZONES WHERE TRANSIENT LODGING (HOTELS)
ARE NOT CURRENTLY ALLOWED; DELETING
“BED & BREAKFAST” FROM PARKING TABLE
50.06.002-3

LU 18-0034
FINDINGS & CONCLUSIONS

NATURE OF PROCEEDINGS

The City of Lake Oswego requests approval of legislative changes to Chapter 50 (Community Development Code) of the Lake Oswego Code to allow Short-Term Rental Lodging (STRs) in zones where transient lodging (Hotels) are not currently allowed; and to delete “Bed & Breakfast” from Parking Table 50.06.002-3.

HEARINGS

The City Council held a public hearing and received testimony on June 4, 2019. On June 18, 2019, the City Council deliberated and made a tentative decision to approve the proposed Code amendments, as modified by the Council.

CRITERIA AND STANDARDS

- A. City of Lake Oswego Comprehensive Plan
Community Culture – Civic Engagement, Policies 1, 2, 4 and 5
Land Use Planning – Development, Policy A-1(b) and A-1(c)
Land Use Administration, Policy D-1
Inspiring Spaces and Places – Goal 1, Policy 7
Complete Neighborhoods and Housing, Policy B-1, B-4, and C-6
Economic Vitality, Policy A-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

FINDINGS AND REASONS

As support for its decision, the City Council incorporates the staff report, dated May 21,

1 2019 with all exhibits attached thereto, supplemented by the further findings and conclusions
2 of the Council, below. In the event of any inconsistency between the Council’s supplementary
3 findings and conclusions and the incorporated matter, the supplementary findings and
4 conclusions control.

5 Following are the supplementary findings and conclusions of the Council:

6 1. The Council received testimony in opposition to the limitations on Short Term Rental
7 Lodging (STRs) recommended by the Planning Commission, including: one rental per lot,
8 120 nights per calendar year, owner on-premises during rental, 25% of floor area, no
9 rental of all bedrooms, off-street parking, and six guests. The testimony argued that
10 some or all of these limits are unnecessary because the existing Home Occupation
11 standard – to which the STR limitations are being added – requires that Home
12 Occupations shall not “alter the residential character of the neighborhood nor infringe
13 upon the right of residents in the vicinity to the peaceful enjoyment of the
14 neighborhood” [LOC 50.03.004.1.b.ii(1)], and that standard, together with the limit on
15 other commercial uses in conjunction with STR lodging [LOC 50.03.004.1.b.ii(7)(b)], is
16 sufficient to control the impacts of STRs and maintain the residential character of
17 neighborhoods.

18 Consistent with the Planning Commission, the Council finds that the Land Use
19 Planning Chapter of the Comprehensive Plan, Policy A-1(b) and (c), is applicable:
20 “Promote compatibility between development and existing and desired neighborhood
21 character; [and] ... Minimize and/or mitigate adverse traffic impacts generated by new
22 development on adjacent neighborhoods.”

23 The Council finds that this policy is met without placing limitations on the
24 number of rentals per lot, nights per calendar year, floor area, number of rented
25 bedrooms, parking, or guests. However, the Council finds that it is necessary to require
26 that a person who owns the lot containing a short-term rental (primary or secondary

1 dwelling unit) must maintain their primary residence on the lot. The owner should not
2 be required to be on the lot when the dwelling is rented; however, having a primary
3 resident who is the owner helps to ensure that the residential character of the
4 neighborhood will be maintained. The Council finds that the primary resident
5 requirement, together with the existing Home Occupation standards of LOC
6 50.03.004.1.b.ii and the City's non-land use nuisance and traffic codes, is sufficient to
7 minimize the impacts of STRs on the neighborhood, complying with Policy A-1.

8 The Council also finds that the proposal as modified from the Planning
9 Commission's recommended code amendments remains consistent with the
10 Comprehensive Plan Complete Neighborhoods and Housing Chapter, Policy C-6:
11 "Implement home occupation standards to regulate home-based businesses
12 (occupations) to provide business development opportunities while preventing adverse
13 impacts on residential areas."

- 14 2. The Council received testimony that STR lodging is a commercial use and therefore
15 conflicts with purposes of the City's residential zones under LOC Chapter 50 (Community
16 Development Code). No applicable Comprehensive Plan policy was cited.

17 The criteria for a legislative amendment are to comply with applicable state law,
18 Statewide Planning Goals or administrative rules, and applicable provisions of the
19 Comprehensive Plan. [LOC 50.07.003.15.b]. The Council notes that Comprehensive
20 Plan, Complete Neighborhoods and Housing Chapter, Policy C-6, cited in Finding #1,
21 above, accommodates limited commercial uses in residential zones, specifically Home
22 Occupations. As provided in LOC 50.03.004.1.b.ii, a Home Occupation is "A lawful use
23 conducted in a residential zone in or on the premises of a dwelling unit, said use being
24 secondary to the use of the dwelling for dwelling purposes."

25 The Council finds that the Home Occupation regulations in LOC 50.03.004.1.b.ii
26 as modified for STRs—requiring that a person who owns the lot containing a short-term

1 rental (primary or secondary dwelling unit) maintain their primary residence on the
2 lot—ensures that a lot containing an STR is used primarily for residential purposes; the
3 STR must be secondary to the primary single-family residential use. The argument that
4 STRs are similar to a primary commercial use is not valid because commercial uses that
5 meet the criteria for a Home Occupation (“does not alter the residential character of the
6 neighborhood nor infringe upon the right of residents in the vicinity to the peaceful
7 enjoyment of the neighborhood... [no] outside storage of goods or material“ [repair is
8 inside a garage], etc.) are permissible in residential zones.

9 Even if the residential zone purpose provisions were criteria for this legislative
10 amendment, which they are not, allowance of home occupations in the residential zone,
11 including STRs, is not contrary to the purpose of providing lands for single-family
12 development with certain densities per gross acre. LOC 50.02.001.1.b, .2.b, .3.b. The
13 STR home occupation is a type of accessory use within a dwelling and does not displace
14 the opportunity for single-family development with the requisite densities per
15 respective zone. The Council finds that the primary resident requirement together with
16 the existing Home Occupation standards of LOC 50.03.004.1.b.ii are sufficient to ensure
17 that the primary use of the lot remains residential, consistent with the zone’s purpose.

- 18
- 19 3. The Planning Commission received testimony from Housing Land Advocates and the Fair
20 Housing Council of Oregon (HLA-FHCO) (Exhibit G-14). HLA-FHCO, citing ORS
21 197.175(2)(a) and Statewide Planning Goal 10, requesting the Commission defer action
22 on LU 18-0034 until Goal 10 findings could be made and the proposal evaluated under
23 the City’s Housing Needs Analysis and Buildable Lands Inventory.

24 The Commission found that the applicable Goal 10 policies are contained in the
25 Complete Neighborhoods and Housing Chapter of the Lake Oswego’s State-
26 acknowledged 2013 Comprehensive Plan. The Staff Report dated March 11, 2019

1 addresses the City’s Buildable Lands Inventory and Housing Needs Analysis, as follows:

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

6 Planning Commission Finding: “The proposed amendments are designed to
7 allow for changes in the market and flexibility in lifestyle choice for residents
8 by allowing STRs under a Social Model (home-sharing) that welcomes guests
9 to the community while **maintaining the primary use of dwellings as**
10 **residential**. By allowing STRs as an accessory use subject to Home Occupation
11 (and supplemental standards), the City maintains the ability to meet the needs
12 of existing and future residents.”

13 The Council finds that Goal 10 has been addressed and the proposal as modified
14 by the Council has no effect on land supply or the City’s ability to meet its housing
15 needs. Specifically, the primary resident requirement together with the existing Home
16 Occupation standards of LOC 50.03.004.1.b.ii ensure that the primary use of the lot
17 remains residential; consistent with Policy B-1, the City maintains its supply of housing
18 and the proposal has no effect on the City’s inventory of buildable lands. While
19 Accessory Dwelling Units may be used as STRs, the City’s Housing Needs Analysis and
20 Buildable Lands Inventory (2013 Comprehensive Plan, Appendix; Ordinance 2060,
21 Exhibit 4) does not assume any production of ADUs, even though City code allows ADUs
22 and ADUs have been built in Lake Oswego. Further, no empirical evidence has been
23 provided indicating that housing prices or rental rates (housing affordability) in Lake
24 Oswego would be affected by allowing STRs. The Council did receive testimony, albeit
25 anecdotal, that the supplemental household income that STRs may assist homeowners
26 with remaining in their homes, particularly for those on fixed incomes or who have

1 experienced unemployment or similar life changes.

2 4. The Council received testimony that STRs should not be allowed because the City would
3 not have capacity to enforce the regulations. No applicable Comprehensive Plan policy
4 was cited. The Council finds that by applying the City's existing home occupation
5 standards with limited modifications (primary resident requirement, limit other
6 commercial uses in conjunction with STRs) enforcement should be feasible and similar
7 to how the City responds to other code violation complaints. The Council notes that in
8 the past 11 years, the City has received only 22 complaints relating to illegal short-term
9 rentals, which on an annual basis is less than 1 percent of all code violation complaints
10 the City receives.

11 5. The Council considered the Planning Commission recommendation that the ordinance
12 have a sunset date (with the exception of the repeal of "bed and breakfast" from
13 Parking Table 50.03.002-3). The Council finds that the STR code amendments should be
14 repealed automatically two years from their effective date unless the Council acts to
15 extend or remove the repeal provision, allowing the City to review the effects of STR
16 operations upon the neighboring properties in order to determine if additional
17 limitations should be imposed, limitations removed, or if the STR standards should
18 otherwise be modified, or to extinguish the opportunity to conduct STRs within
19 dwellings, all to assure that Policies A-1 and C-6 are met.

20
21 **CONCLUSION**

22 The City Council concludes that LU 18-0034, as modified to be consistent with these
23 findings, complies with all applicable criteria and should be approved. The Council also
24 concludes that proposed Ordinance 2815, as modified to be consistent with these findings, and
25 which implements LU 18-0034, should be enacted.

LOC 50.10.003 DEFINITIONS

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2. Definition of Terms

* * *

Hotel or Motel

A building or group of buildings used for transient residential purposes containing rental units which are designed to be used, or which are used, rented or hired out for sleeping purposes, including associated retail uses within the hotel or motel intended to serve paying guests **but not including short-term rental dwellings.**

* * *

Residence, Primary

A dwelling where a person lives most of the time. At a given time, a person does not have more than one primary residence. For purposes of determining whether a dwelling is a primary residence, the City may consider whether the dwelling is the legal residence of the person for purposes of voting, motor vehicle / driver licensing, income tax calculation, the time the person spent at the residence, and other such factors.

* * *

Short-Term Rental Lodging

The offering of one or more bedrooms (and use of any common area) on a lot containing a single-family detached dwelling for transient residential purposes to serve paying guests for periods of 30 days or less.

* * *

LOC 50.03.002 USE TABLE

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2. RESIDENTIAL USE TABLE

TABLE 50.03.002-1: RESIDENTIAL DISTRICTS USE TABLE												
P = Permitted Use Blank = Not Permitted C = Conditional Use A = Accessory Use												
[x] Table notes located at the end of the table												
Use Category	Use Type	Residential										Use-Specific Standards
		R-15	R-10	R-7.5	R-6	R-5	R-DD	R-W	R-3 [3]	R-2	R-0 [3] [4]	
ACCESSORY USES												
Accessory Uses	Community garden	A	A	A	A	A	A	A	A	A	A	50.03.003.6.j
	Home occupation	A	A	A	A	A	A	A	A	A	A	50.03.004.1.b.ii
	<u>Short Term Rental Lodging</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	50.03.004.1.b.ii
	////											
	Accessory dwelling unit	A	A	A	A	A	A			A	A	A
Notes:	<p>[1] Erected on pilings over the water of Oswego Lake.</p> <p>[2] No commercial activity allowed.</p> <p>[3] If lot has multiple zones, e.g., R-0/EC, see LOC 50.02.002.2.e.</p> <p>[4] Site-specific use limitations, see LOC 50.02.002.2.c.</p>											

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LOC 50.03.004 ACCESSORY STRUCTURES AND USES

1. Accessory Uses

* * *

b. Standards for Specific Uses

* * *

ii. Home Occupation

A home occupation may be conducted where allowed by other provisions of this Code if the following conditions are continuously complied with:

- (1) The use does not alter the residential character of the neighborhood nor infringe upon the right of residents in the vicinity to the peaceful enjoyment of the neighborhood.

- (2) A current and valid business license is maintained.
- (3) No ~~employees~~persons other than family members who reside at the dwelling may be employed or otherwise work in the home occupation, except persons performing housekeeping, yard maintenance, or other domestic services for the dwelling where the business occurs.
- (4) No outside storage of goods or materials other than vegetation.
- (5) No more than 25% of the aggregate floor area on the lot is devoted to nonresidential use, except that an entire dwelling unit or portion thereof may be used for short-term rental lodging; an accessory structure may be used provided the provisions of this subsection are met.
- (6) Marijuana facilities are prohibited.
- (7) Short-term rentals shall meet the following additional standards:**
- (a) A person who owns a lot containing a short-term rental (primary or secondary dwelling unit) must maintain their primary residence on the lot. The owner is not required to be on the lot when the dwelling is rented.**
- (b) No other commercial uses are allowed in conjunction with or accessory to a short-term rental. The short-term rental shall not be marketed for group events such as weddings, classes, or similar events for example.**

* * *