

ORDINANCE 2884

AN ORDINANCE OF THE LAKE OSWEGO CITY COUNCIL AMENDING LOC CHAPTER 50 (COMMUNITY DEVELOPMENT CODE) FOR THE PURPOSE OF CLARIFYING AND UPDATING VARIOUS PROVISIONS (2021); AND, ADOPTING FINDINGS (LU 21-0057).

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 January 24, 2022, at which the staff report, testimony, and evidence were received and considered; and

WHEREAS, the Planning Commission has recommended that LU 21-0057 be approved by the City Council; and

WHEREAS, a public hearing on LU 21-0057 was held before the City Council of the City of Lake Oswego on March 17, 2022, at which the staff report, testimony, and evidence were received and considered; and

WHEREAS, these amendments to the Lake Oswego Code, Chapter 50 (Community Development Code) are intended to remove ambiguous and conflicting language, correct the text, and add clarifying text which is consistent with past interpretations;

The City of Lake Oswego ordains as follows:

Section 1. The City Council hereby adopts the Findings and Conclusions (LU 21-0057), 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.

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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.

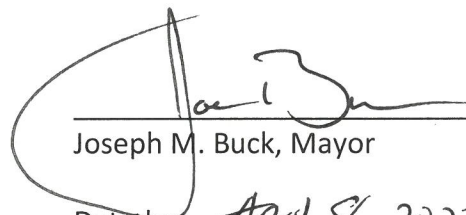
Enacted at the meeting of the City Council of the City of Lake Oswego held on the 5th day of April 2022.

AYES: Mayor Buck, Rapf, Mboup, Wendland, Nguyen, Verdick

NOES: None

ABSTAIN: None

EXCUSED: Manz



Joseph M. Buck, Mayor
Dated: April 8, 2022

ATTEST:



Kari Linder, City Recorder

APPROVED AS TO FORM:



Jason Loos, City Attorney

1 (Carole Ockert), dated 3/17/2022

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3 **CRITERIA AND STANDARDS**

- 4 A. City of Lake Oswego Comprehensive Plan
- 5 Land Use Planning - Policies A-1, A-2, C-1, C-3, and D-1
- 6 Community Culture - Policies 1, 2, 3, 4, 5 and 8
- 7 Inspiring Spaces and Places - Goal 1, Policies 1, 2, 3, and 8; Goal 2, Policy 4 (d and e)
- 8 Complete Neighborhoods & Housing - Policies A-4 and C-7
- 9 Economic Vitality - Policy B-1 (b, c, and d)
- 10 Community Health and Public Safety – Sound Quality – Policy 1; Access to Local Food –
- 11 Policy 1
- 12 Healthy Ecosystems – Oswego Lake – Policies 1 and 2
- 13 B. City of Lake Oswego Community Development Code
- 14 LOC 50.07.003.3.c. Published Notice for Legislative Hearing
- 15 LOC 50.07.003.16.a Legislative Decisions Defined
- 16 LOC 50.07.003.16.b Criteria for Legislative Decision
- 17 LOC 50.07.003.16.c Required Notice to DLCD
- 18 LOC 50.07.003.16.d.iii Planning Commission Recommendation Required
- 19 LOC 50.07.003.16.e City Council Review and Decision

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21 **FINDINGS AND REASONS**

22 The City Council incorporates the Planning Commission Staff Report dated December 20,

23 2021 (Exhibit D-1) for, with all exhibits, and the Findings and Conclusions in the Commission’s

24 February 14, 2022 Findings, Conclusions and Order, for LU 21-0057, as support for the Council’s

25 decision. In the event of any inconsistency between the supplementary matter herein and the

26 incorporated material, the matter herein controls.

Following are the supplementary findings and conclusions of this Council:

1. Building Design Standards (Maintenance Amendment #1).

The First Addition – Forest Hills Neighborhood Association submitted Exhibit G-3 and testified in opposition to proposed Maintenance Amendment #1, stating that it would result in development that would not complement single-family design in the neighborhood. The testimony submitted by the First Addition – Forest Hills Neighborhood Association did not identify any specific Comprehensive Plan policies that the amendment does not meet.

1 The Council notes that the design standard, and hence the amendment, does not apply
2 to properties located in design districts; it also does not apply to developments that are
3 reviewed under the clear and objective design standards for multi-family development under
4 LOC 50.06.001.7. Further, the building design standard, LOC 50.06.001.5.b.i, requires the
5 subject building to be complementary to *adjacent* buildings of good design. “Adjacent” means
6 “*touching; across a public right-of-way from; across an easement from; across a small stream or*
7 *creek from*” [LOC 50.10.003.2], rather than the neighborhood generally.

8 The proposed amendment clarifies that the building design standard requires a building
9 to be complementary to adjacent buildings in relation to other buildings of similar
10 design/characteristics (e.g. commercial to commercial; commercial to multi-family) but not to
11 adjacent single-family buildings. The Council notes that the elements that require
12 complementariness, e.g., materials, setbacks, rooflines, height, and especially overall
13 proportions are inherently qualitatively and quantitatively different when comparing structures
14 subject to this standard (commercial, public facilities, multi-family dwellings) to single-family
15 dwellings. The examples offered by the neighborhood association (Lake Oswego Library, Adult
16 Community Center, and reservoir pump station) are unique public facilities, each with its own
17 design and dimensional requirements that make comparisons to single family dwellings
18 impractical. The Council finds that the amendment will not negatively impact the Code’s
19 ongoing ability to ensure compatible redevelopment, preservation of neighborhood character,
20 and quality of architectural design. For example, if public facilities (e.g. Adult Community
21 Center, library) are constructed or redeveloped adjacent to only single-family dwellings, the
22 public facilities would be required to meet other development standards required by the zone
23 (e.g. PF zone), such as maximum height, setbacks and conditional use criteria, that would
24 ensure compatibility. The Council finds compatibility of commercial, multi-family, and public
25 facility development with the surrounding single-family neighborhoods is achieved by the
26 application of zoning, dimensional and other design standards.

 In addition to no conflict of the proposed amendment with any Comprehensive Plan

1 policy being identified by the commenter, the Council finds that the amendment complies with
2 the Comprehensive Plan policies, as discussed in the staff report dated December 20, 2021
3 (Exhibit D-1):

4 Land Use Planning - Policies A-1 (b and g), A-2 (c), C-1 (a), and C-3
5 Inspiring Spaces and Places - Goal 1, Policies 1, 2 and 8; Goal 2, Policy 4 (d and e)
6 Complete Neighborhoods & Housing - Policies A-4 and C-7
7 Economic Vitality - Policy B-1 (b and c)

7 **2. Definition of Family (Maintenance Amendment #5)**

8 The First Addition – Forest Hills Neighborhood Association testimony also raised
9 concerns regarding the amendment to the definition of “family,” and asked for a definition
10 of “single housekeeping unit” and a limit on the number of people living in one dwelling unit
11 (Exhibit G-3). The testimony did not identify any specific Comprehensive Plan policies that the
12 amendment does not meet.

13 The Council finds that the proposed amendment removes references to familial and
14 nonfamilial relationships from the definition of “family” to bring the definition in compliance
15 with HB 2583 (2021), effective January 1, 2022. The definition limited occupancy contrary to
16 this bill. Per HB 2583, “maximum occupancy limit[s] may not be established or enforced by any
17 local government, for any residential dwelling unit, if the restriction is based on the familial or
18 nonfamilial relationships among any occupants.” Thus, the Council finds that state law has
19 made the maximum occupancy limitation in the “family” definition unenforceable.

20 The Council further notes that the current definition of “family” had no practical limit, as
21 it provided for five unrelated persons and persons related to those respective five persons by
22 blood, marriage, legal adoption, or associated by guardianship, conservatorship or a foster care
23 relationship to occupy the dwelling unit. The requirement for the occupants to reside within
24 the dwelling as a “single housekeeping unit” remains, and that per LOC 50.10.003.2, the
25 “dwelling unit” definition assists in the definition of what constitutes a “single housekeeping
26 unit”: one or more habitable rooms which are occupied or which are intended or designed to
be occupied ... with housekeeping facilities for living, sleeping, sanitary facilities, cooking and

1 eating.” In addition to no conflict of the proposed amendment with any Comprehensive Plan
2 policy being identified by the commenter, the Council finds the proposed amendment complies
3 with state law and with the Comprehensive Plan policies.

4 **CONCLUSION**

5 The Council concludes that LU 21-0057 / Ord. 2884, as recommended by the Planning
6 Commission, complies with all applicable criteria and should be approved.

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LOC 50.03.005 TEMPORARY STRUCTURES AND USES

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5. IN COMMERCIAL, INDUSTRIAL, AND PF/PNA ZONES

The following temporary uses are permitted in commercial, industrial, and PF/PNA zones. Business licenses are required for all temporary commercial activities.

a. "Saturday Market" type sales of produce from temporary sales shelters (including vehicles) subject to the following standards:

i. Weekends: From 8:00 a.m. to 4:00 p.m. on Saturdays and 11:00 a.m. to 5:00 p.m. on Sundays.

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50.04.001 DIMENSIONAL TABLE

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7. OSWEGO LAKE SETBACK

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b. The following uses and structures are permitted within the Oswego Lake setback:

TABLE 50.04.003-2: USES AND STRUCTURES PERMITTED WITHIN OSWEGO LAKE SETBACK			
Uses and Structures	Maximum Height	Height Limitations	Other Standards
Barbeque; fireplace	6 ft.	Height exceptions in LOC 50.04.003.4 are NOT applicable	
Lights; steps; dock; deck; pool; spa/Jacuzzi	30 in.	Height exceptions in LOC 50.04.003.4 are NOT applicable	
Outdoor shower	8 ft.	Height exceptions in LOC 50.04.003.4 are NOT applicable	
Boathouse	13.5 ft., measured from Oswego Lake surface elevation	Height exceptions in LOC 50.04.003.4 are NOT applicable	<ul style="list-style-type: none"> • Wall height: 10 ft., measured from Oswego Lake surface elevation, to eave • Maximum 560 sq. ft. footprint • <u>Side and rear yard setbacks do not apply within Oswego Lake setback.</u>

TABLE 50.04.003-2: USES AND STRUCTURES PERMITTED WITHIN OSWEGO LAKE SETBACK			
Uses and Structures	Maximum Height	Height Limitations	Other Standards
Lake-related infrastructure structures and uses	None		None
Fences and retaining walls (including seawalls)	See LOC 50.06.004.2		Only as permitted by LOC 50.06.004.2

50.06.001 BUILDING DESIGN

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5. COMMERCIAL, INDUSTRIAL, AND MULTI-FAMILY DEVELOPMENT NOT LOCATED IN THE FMU ZONE, AND MINOR DEVELOPMENT IN THE R-DD ZONE STANDARDS FOR APPROVAL

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b. Design Standards

Buildings shall be designed and located to complement and preserve existing buildings, streets and paths, bridges and other elements of the built environment, and to assure accessibility for bicyclists, pedestrians, and users of other transportation modes.

i. Design buildings to be complementary in appearance to adjacent structures of good design that, if newly constructed, would either be subject to this standard or to a design overlay building design standard with regard to:

- (1) Materials;
- (2) Setbacks (for retail/commercial part specifically);
- (3) Rooflines;
- (4) Height; and
- (5) Overall proportions.

Exceptions:

(1) This standard does not apply to seasonal restaurant enclosures.

(2) If there are existing buildings on a multi-building site, the new building is exempt from this standard and must comply with Subsection ii, below.

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50.07.003 REVIEW PROCEDURES

1. APPLICATION

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f. Neighborhood Contact and Notice Required for Certain Applications

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ii. Selecting Date, Time, and Location of Neighborhood Meeting

In establishing the date, time and location of the meeting with the neighbors and with the neighborhoods:

(1) Procedure

The applicant shall follow the applicable procedures in subsections 1.f.ii(1)(a)(i) and (ii) of this section.

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(b) Date, Time, and Location

Unless approved by the chair of a recognized neighborhood association:

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(iv) If the meeting is held at a private residence or business, it shall be posted at the time of the meeting at the meeting place and shall note that the meeting is open to the public and all interested persons may attend, or if approved by the chair of the recognized neighborhood association, may be held via an online meeting platform.

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h. Extensions or Continuances

i. Extension to File Completed Application. No extension or continuance is available to file a completed application, per ORS 227.178(3, 4). ~~The applicant for a major or minor development may request one additional 180-day extension for filing a complete application.~~

Note to Codifier: Upon codification, remove the Editor's Note:

~~[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.]~~

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3. PUBLIC NOTICE/OPPORTUNITY FOR PUBLIC COMMENT

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c. Notice for Initial Public Hearing for Minor and Major Development

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iii. Except as otherwise provided in subsection 3.c.iv of this section, the notice shall:

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(5) State the date, time and location of the hearing, or if the hearing is to be held by telephonic or electronic means, date, time and the method to telephonically or electronically access the hearing;

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4. HEARINGS

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c. Testimony, Exhibits, and Other Evidence

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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 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

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iv. Notice

No additional notice of a continued hearing is required if the hearing body continues the hearing to a date, time and location or telephonic / electronic means of attendance ~~place~~ certain. If a public hearing must be continued due to lack of a quorum of the hearing body, no additional notice of the continued hearing is required if all entrances to the hearing location are posted by the time and date of the originally scheduled hearing with a conspicuous written notice setting forth a date, time and place certain for the continued hearing, or if the hearing was to be held by telephonic or electronic means, the continuance is so announced at that time in the designated telephonic or electronic manner. In all other cases, public notice of a continued hearing shall be given pursuant to LOC 50.07.003.3.c.

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50.07.007 LAND DIVISIONS

2. FLAG LOTS

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e. Building and Site Design Standards

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iii. Access Lane Siting

The access lane shall be located no closer than five ft. to any existing dwellings, measured from the access easement boundary.

50.08.002 MINOR VARIANCES

2. MINOR VARIANCE CLASSIFICATIONS

a. A variance of 20% or less from yard setbacks or the Oswego Lake setback for a single-family dwelling, zero lot line dwelling, or an associated accessory structure that does not comply with LOC 50.03.004.2.b, Reduction of Side or Rear Yard Setbacks for Accessory Structures, provided:

i. 20% or less reduction from yard setbacks or the Oswego Lake setback:

~~(1)~~i. The resulting side yard setback is not less than five ft.; and

~~ii(2)~~ii. If located in the R-6 zone, a minor variance to front yard setbacks shall be limited to two ft. or less; or

iii. If the request is necessary to preserve a tree:

(1) The request is the minimum necessary to preserve the tree; and

(2) The resulting yard setback is not less than 50% of the required standard; and

(3) Side yards are not reduced to less than five ft., and if located in the R-6 zone, the required front yard setback is not reduced by more than two ft.

50.10.003 DEFINITIONS

2. DEFINITION OF TERMS

The following terms shall mean:

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Family

~~An individual or two or more persons~~ Persons ~~related by blood, marriage, legal adoption, or associated by guardianship, conservatorship or a foster care relationship, or a group of not more than five persons not so related or associated~~ living together in a dwelling unit as a single housekeeping unit.