

**ORDINANCE 2891**

**AN ORDINANCE OF THE CITY OF LAKE OSWEGO AMENDING LOC 50.01.006 NONCONFORMING USES, STRUCTURES, LOTS AND SITE FEATURES AND LOC 50.07.004 ADDITIONAL SUBMITTAL REQUIREMENTS; AND ADOPTING FINDINGS (LU 22-0008).**

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

WHEREAS, Nonconforming Development is development that complied with the Community Development Code (LOC Chapter 50) (CDC) when the code was established, but no longer conforms due to some later code amendment or annexation; and

WHEREAS, the current CDC allowance that “Portions of a nonconforming structure that are not being altered as part of the expansion are not required to be brought into conformance with this Code.” (LOC 50.01.006.3.a.ii) has had negative impacts on the physical characteristics of surrounding neighborhoods.

WHEREAS, the proposed code amendments require that these nonconformities not be allowed to continue when a dwelling is demolished or expanded beyond a certain threshold; and

WHEREAS, ORS 197.307(4) requires that all standards and criteria applicable to housing be “clear and objective,” while also permitting the use of an alternative, discretionary optional track; and

WHEREAS, expansions of nonconforming structures beyond the proposed thresholds would be allowed with approval of a variance or where other code exceptions for tree conservation or dwellings on publicly owned land are met; and

WHEREAS, a public hearing before the Planning Commission was held December 12, 2022, at which the staff report, testimony, and evidence were received and considered; and

WHEREAS, the Planning Commission has recommended that LU 22-0008 be approved by the City Council; and

WHEREAS, a public hearing on LU 22-0008 was held before the City Council of the City of Lake Oswego on February 7, 2022, 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 as proposed;

The City of Lake Oswego ordains as follows:

**Section 1.** The City Council hereby adopts the Findings and Conclusions (LU 22-0008), attached as Attachment 1.

**Section 2.** The Lake Oswego Code is hereby amended by adding the new text shown in double underlined type and deleting text shown in ~~striketrough~~ type in Attachment 2, dated February 8, 2023.

**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 meeting of the Lake Oswego City Council of the City of Lake Oswego held on the 21<sup>st</sup> day of February, 2023.

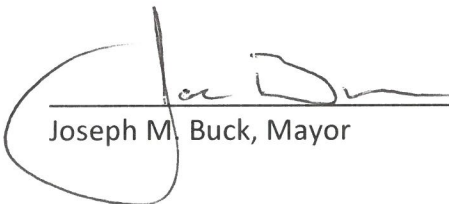
AYES: Councilors Verdick, Afghan, Corrigan, Wendland

NOES: Mayor Buck and Councilor Mboup

ABSENT: None

ABSTAIN: None

EXCUSED: Rapf

  
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Joseph M. Buck, Mayor

Dated: February 24, 2023

ATTEST:

  
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Kari Linder, City Recorder

APPROVED AS TO FORM:

  
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Ellen Osoinach, City Attorney

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BEFORE THE CITY COUNCIL

OF THE CITY OF LAKE OSWEGO

<p>A REQUEST FOR AMENDMENTS TO LOC 50.01.006 NONCONFORMING USES, STRUCTURES, LOTS AND SITE FEATURES, AND LOC 50.07.004 ADDITIONAL SUBMITTAL REQUIREMENTS; AND ADOPTING FINDINGS.</p>	<p>LU 22-0008          CITY OF LAKE OSWEGO           FINDINGS AND CONCLUSIONS</p>
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**NATURE OF PROCEEDINGS**

The City of Lake Oswego is requesting approval of legislative amendments (Ordinance 2891) to the Lake Oswego Community Development Code (CDC) (Lake Oswego Code, Chapter 50) to require conformance to CDC standards when remodeling and redevelopment of existing nonconforming residential structures exceeds certain thresholds. The amendments are to: LOC 50.01.006, Nonconforming Uses, Structures, Lots and Site Features; and LOC 50.07.004, Additional Submittal Requirements.

**HEARINGS**

The Planning Commission held a public hearing and considered this application at its meeting on December 12, 2022. The Commission adopted its Findings, Conclusion and Order recommending approval of LU 21-0057 on January 9, 2023.

The City Council held a public hearing and considered the Commission’s recommendation on February 7, 2023.

The following information was presented to the Council at its hearing and added to the record:

- G-5 Email from Ruth Bregar, 02/01/2023
- G-6 Email from Gretchen Sabo, 02/04/2023
- G-7 Email from Cheryl Uchida, 02/06/2023
- G-8 Email from Grant Howell, 02/06/2023

1 **CRITERIA AND STANDARDS**

2 A. City of Lake Oswego Comprehensive Plan

3 Land Use Planning Policies A-1, A-2, and D-1  
4 Inspiring Spaces and Places: Goal 1, Policies 1, 2, 3 and 8; Goal 2, Policies 4 (d and e)  
5 Complete Neighborhoods & Housing Policies A-4, A-5 and C-7  
6 Community Health and Public Safety, Sound Quality - Policy 1

7 B. City of Lake Oswego Community Development Code

8 LOC 50.07.003.16.a Legislative Decisions Defined  
9 LOC 50.07.003.16.c Required Notice to DLCD  
10 LOC 50.07.003.16.d 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 Exhibit D-1 (Planning Commission Staff Report, dated  
14 November 29, 2022, with all exhibits attached thereto), and the Commission’s January 9, 2022  
15 Findings, Conclusions and Order, for LU 22-0008, as support for the Council’s decision. In the  
16 event of any inconsistency between the supplementary matter herein and the incorporated  
17 material, the matter herein controls.

18 Following are the supplementary findings and conclusions of this Council:

19 Carole Ockert, on behalf of the Lake Oswego Neighborhood Chairs Committee (NCC)  
20 (representing 15 City-recognized Neighborhood Associations), testified in support of LU 22-  
21 0008 but opposed the proposed code exemptions for Middle Housing and Affordable Housing  
22 developments. Ms. Ockert did not identify any Comprehensive Plan policies that the proposal  
23 did not meet.

24 Notwithstanding the commenter’s failure to cite applicable policy, the Council finds that  
25 LU 22-0008 should be approved without exempting Middle Housing and Affordable Housing. In  
26 2019, the Oregon Legislature began requiring cities to update their Housing Needs Analysis  
(HNA) and to adopt a Housing Production Strategy (HPS) (See HB 2003(2019)). The Council finds  
the City’s work on the HNA and HPS is likely to conclude in 2024, at which time the Council will

1 have more context for considering regulatory incentives for Middle Housing and Affordable  
2 Housing.

3 **CONCLUSION**

4 The Council concludes that LU 22-0008, as contained in Attachment 1 to Ordinance  
5 2891, complies with all applicable criteria and should be approved. The Council also concludes  
6 that proposed Ordinance 2891, which implements LU 22-0008, should be enacted.

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8 AYES: Councilors Verdick, Afghan, Corrigan, Wendland

9 NOES: Mayor Buck and Councilor Mboup

10 ABSENT: None

11 ABSTAIN: None

12 EXCUSED: Rapf

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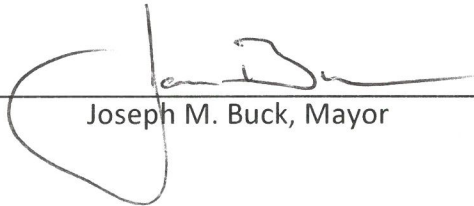
14 DATED this 21<sup>st</sup> day of February, 2023.

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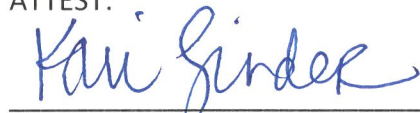
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Joseph M. Buck, Mayor

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ATTEST:

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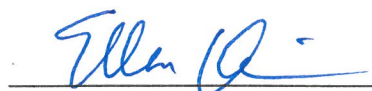
Kari Linder, City Recorder

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APPROVED AS TO FORM:

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Ellen Osoinach, City Attorney

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**Code Amendments for Continuation of Nonconforming Residential Development**

02/08/2023

**50.01.006 NONCONFORMING USES, STRUCTURES, LOTS AND SITE FEATURES**

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**2. CONTINUATION AND MAINTENANCE OF NONCONFORMITIES**

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**a. Continuation of Nonconformity**

Subject to the provisions of this section, and except as otherwise provided by this Code, a nonconforming use, structure, lot, or site feature may be continued in use so long as it remains otherwise lawful.

**b. Demolition or Alteration of a Nonconforming Dwelling**

**In a residential zone, an existing nonconforming residential dwelling shall be removed or brought into conformance with this Code upon:**

- i. Demolition of the dwelling under LOC 45.12.100(1)(d), except where demolition results from the Building Official ordering the reconstruction of a wall under LOC 50.01.006.2.c because it is unsafe; or**
- ii. An increase in floor area of the dwelling by 50 percent or more where the total floor area of the dwelling after the addition exceeds 90% of maximum allowed floor area, except as provided in LOC 50.01.006.3.**

**EXCEPTION: In calculating whether the increase in floor area of the dwelling is 50 percent or more, new floor area resulting from conversion of existing unfinished and enclosed space within the structure is excluded, provided the conversion does not expand the building or increase roof height (including dormers).**

**cb. Maintenance**

On any nonconforming structure or site feature, maintenance may be performed in a manner not in conflict with the other provisions of the City Code. Nothing in this Code shall be deemed to prevent the strengthening or restoring to a safe condition of any structure, or portion thereof, or site feature declared to be unsafe by any official charged with protecting the public safety, upon the order of that official.

# Code Amendments for Continuation of Nonconforming Residential Development

02/08/2023

## 3. EXPANSION OR CHANGE OF NONCONFORMITIES

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### a. Nonconforming Structures

A nonconforming structure may only be expanded or changed in accordance with the provisions of this subsection.

- i. Nonconforming structures may only be expanded if:
  - (1) The expansion does not increase the degree of any existing nonconformity; and
  - (2) The expansion does not create any new nonconformity.
- ii. Portions of a nonconforming structure that are not being altered as part of the expansion are not required to be brought into conformance with this Code.
- iii. Extensions of nonconforming walls may be approved through the Minor Variance process set forth in LOC [50.08.002.2.k](#).
- iv. For residential structures, a change in roof pitch on a nonconforming portion of the structure may be permitted if the roof height is not increased by more than six ft. **above the existing wall top plate** and does not exceed the base zone height.

<p><b>Comment:</b> This amendment is consistent with current practice and clarifies the intent, which is to allow changes in roof pitch (for example from flat to a gable or shed) but not allow increases in wall height.</p>
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**v. A nonconforming dwelling in a residential zone may maintain its nonconformity notwithstanding the requirement in LOC 50.01.006.2.b to either demolish or conform to the Code, where:**

- (1) The dwelling is located on publicly owned property; or**
- (2) The development maintains a native tree 30 inches DBH or greater, or a native tree greater than 15 inches DBH if the lot contains no other native tree 30 inches or greater, within the building envelope of the lot. In both cases, the native tree must not be dead, invasive, or hazardous, as defined in LOC 55.02.020. The owner shall record a notice of development restriction requiring preservation of the native tree prior to issuance of a building permit.**

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## Code Amendments for Continuation of Nonconforming Residential Development

02/08/2023

### **50.07.004 ADDITIONAL SUBMISSION REQUIREMENTS**

#### *14. ALTERATION AND CONTINUATION OF NONCONFORMING DWELLINGS*

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**For applications to remodel a nonconforming dwelling where a nonconformity is proposed to be maintained, the City Manager may require:**

- a. Scaled site plan or plans, floor plans, and elevations that clearly identify and label, with calculations (square feet), all exterior walls, perimeter foundations, and roofing proposed to remain, and all such features proposed to be removed;**
- b. Certification by a registered structural engineer for exterior walls, foundations, and roofing to remain; and**
- c. Any other information the City Manager deems necessary to evaluate compliance with LOC 50.06.001.2.a.**

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