



STAFF REPORT AND RECOMMENDATION

February 16, 2017

FILE NO.: L-17-04

APPLICATION TYPE: Legislative

HEARING DATES: Planning Commission
7:00 p.m., February 26, 2017
Commission Chambers, 625 Center St, Oregon City, OR 97045

APPLICANT: Oregon City Community Development Department

REQUEST: Proposed amendments to the Oregon City Municipal Code. Minimum Improvements and Design Standards for Land Divisions in Chapter 16.12, Definitions in Chapter 17.04, Mixed Use Corridor District in Chapter 17.29, Site Plan and Design Review in Chapter 17.62, Administration and Procedures in Chapter 17.50, Natural Resources Overlay District in Chapter 17.49, Nonconforming Uses, Structures, and Lots in Chapter 17.58, and Communication Facilities in Chapter 17.80.

LOCATION: City-Wide

REVIEWER: Kelly Reid, AICP, Planner

RECOMMENDATION: Staff recommends approval of this application based on the satisfaction of all required criteria for a Legislative action.

PROCESS: OCMC 17.50.170.

- A. *Purpose. Legislative actions involve the adoption or amendment of the city's land use regulations, comprehensive plan, maps, inventories and other policy documents that affect the entire city or large portions of it. Legislative actions which affect land use must begin with a public hearing before the planning commission.*
- B. *Planning Commission Review.*
 - 1. *Hearing Required. The planning commission shall hold at least one public hearing before recommending action on a legislative proposal. Any interested person may appear and provide written or oral testimony on the proposal at or prior to the hearing. The community development director shall notify the Oregon Department of Land Conservation and Development (DLCD) as required by the post-acknowledgment procedures of ORS 197.610 to 197.625, as applicable.*
 - 2. *The community development director's Report. Once the planning commission hearing has been scheduled and noticed in accordance with Section 17.50.090(C) and any other applicable laws, the community development director shall prepare and make available a report on the legislative proposal at least seven days prior to the hearing.*
 - 3. *Planning Commission Recommendation. At the conclusion of the hearing, the planning commission shall adopt a recommendation on the proposal to the city commission. The planning commission shall make a report and recommendation to the city commission on all legislative*

proposals. If the planning commission recommends adoption of some form of the proposal, the planning commission shall prepare and forward to the city commission a report and recommendation to that effect.

C. City Commission Review.

1. *City Commission Action. Upon a recommendation from the planning commission on a legislative action, the city commission shall hold at least one public hearing on the proposal. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the city commission may adopt, modify or reject the legislative proposal, or it may remand the matter to the planning commission for further consideration. If the decision is to adopt at least some form of the proposal, and thereby amend the city's land use regulations, comprehensive plan, official zoning maps or some component of any of these documents, the city commission decision shall be enacted as an ordinance.*
2. *Notice of Final Decision. Not later than five days following the city commission final decision, the community development director shall mail notice of the decision to DLCD in accordance with ORS 197.615(2).*

IF YOU HAVE ANY QUESTIONS ABOUT THIS APPLICATION, PLEASE CONTACT KELLY REID IN THE PLANNING DIVISION OFFICE AT 503-722-3789.

A. PROPOSAL

The proposal is for a variety of amendments to the Oregon City Municipal Code. Although a majority of the amendments provide clarity, improve processes, or remove code conflicts, the more substantial changes include:

1. Amendment of standards for lot averaging within subdivisions
2. Addition and revision of selected definitions
3. Clarification of how dates are calculated
4. Allowance for 10% parking reduction adjacent to transit routes
5. Removal of specific light bulb and fixture requirements for outdoor lighting
6. Amendment to landscaping plan requirements
7. Amendment to standards for communication facilities to comply with recent legal decisions

A majority of the amendments are proposed to bring greater clarity or transparency to existing development standards. The complete drafted code amendments can be found in the attached Exhibits and a summary and rationale for each code amendment is found in table 1 below.

Table 1. Summary of Code Amendments.

Oregon City Municipal Code Section	Summary of Change	Explanation
16.12.050	{STAFF REPORT TO BE UPDATED WITH PLANNING COMMISSION'S PREFERRED LOT AVERAGING AMENDMENTS HERE}	Concerns that the provision allowed for too many lots to be below the zoning minimum and the sizes could be too small.
17.04.154	Add definition of Building.	Clarify the definition of "building" should be directed to the definition of "structure".
17.04.420	Increase the number of children a family daycare provider may care for from 13 to 16.	Per ORS 329A.440(4), a family daycare provider can have up to 16 children, not 13.
17.04.812	Create definition of "net leasable area".	Net leasable area is used to calculate parking requirements.

17.29.020	Clarify that single and two-family units are permitted when in conjunction with and located in the same building as another permitted use in the zone. This applies to NC, C, MUC-1, MUC-2 and MUD.	Clarifies the intent of the code.
17.49.080	Clarify minimal temporary disturbances.	Clarification of temporary minor disturbance areas.
17.50.030.B 17.50.030.C 17.50.030.D 17.50.030.F	Clarify noticing for Type II-IV processes. Specify that decisions, completeness reviews, appeals, and notices in this Chapter shall be calculated according to OCMC Chapter 1.04.070 and shall be based on calendar days, not business days. Amends Table 17.50.030 to match code language for reconsiderations, Historic Review, Extensions, and Natural Resource Overlay District Review.	Provides clarification and amends Table 17.50.030 to match code language.
17.50.30.B 17.50.120 17.50.190	Clarify who has standing to file an appeal as those who participated orally or in writing in the initial decision.	Clarifies who has standing to appeal, removes reference to state statute, and eliminates inconsistencies in code.
17.52.020.C.4	Allow reduction of minimum parking by 10% if adjacent to a transit route.	A similar reduction was inadvertently removed from the code.
17.58.040 17.58.040.C 17.58.040.C.2	Clarified that nonconforming upgrades are required for increases to the square footage of a building and/or site improvements which include installation of an additional off-street parking stall.	Clarify when nonconforming upgrades are required.
17.62.035.A.2.a 17.62.035.A.2.b 17.62.035.A.2.u	Clarify that any size demolition qualifies as a Type I Minor Site Plan and Design Review.	Corrects an unintended provision of previous code amendments.
17.62.035.A.2.v	Clarify tree removal as a Type I Minor Site Plan and Design Review.	Applicants could not clearly tell that tree removal was included in landscaping which was already a Type I review.
17.62.050.A.1.c	Exempt landscaping tree removal and/or replacement from submitting a plan by a landscape architect if the new species is on an approved tree list. Allow certified landscape designer, arborist, or nurseryman to approve of projects less than 500 sq. ft. rather than a landscape architect.	Streamline tree and landscape review.
17.62.050.A.1.d	Remove requirement for 10% landscaping for major remodeling.	The code and specific zoning designations provide a landscaping minimums more appropriate to zoning designations.
17.62.050.A.20.d	Remove requirement which conflicts with code section requiring all commercial mechanical changes to be a Type I Site Plan and Design Review.	Remove section which was corrected with the adoption of Type I Site Plan and Design Review.

17.62.050.A.23	Clarify connection between development and nonconforming upgrades.	Clarify code requirements.
17.62.065.D	Remove redundant sections and conflicting standards. Remove bulb requirements. Remove standard related to fixture requirements.	Streamline and clarify language, remove blub requirements to allow emerging technologies.
17.80	Update Communication Facilities chapter to allow a quicker review for some projects.	Amend code to comply with 2012 ruling

Background on Lot Averaging Changes

The City's current code requires that proposed subdivisions (land divisions involving four or more lots) have an average lot size that is at or over the zoning designation – for example, in the R-8 Single Family Dwelling zone the minimum lot size is 8,000 square feet; and the average for each subdivision is required to be at or greater than 8,000 square feet. Lots within a subdivision are permitted to vary from this size by as much as 20% less than the minimum, with no limit to the maximum size.

The changes to lot averaging are the most significant change proposed. The changes stem from citizen comments on proposed subdivision developments in which lot averaging was utilized. Neighbors of the proposed subdivision brought concerns that the existing lot averaging provisions allowed for too many lots within a subdivision to be below the average minimum size, and that the 20% reduction allowance resulted in lots that were significantly smaller than the average for the zone. The subdivisions in question had large powerline easements on some of the lots, which resulted in a few large lots that allowed the subdivision to meet the average zoning minimum.

Chapter 16.12.050 contains the standards in question:

16.12.050 - Calculations of lot area.

A subdivision in the R-10, R-8, R-6, R-5, or R-3.5 dwelling district may include lots that are up to twenty percent less than the required minimum lot area of the applicable zoning designation provided the entire subdivision on average meets the minimum site area requirement of the underlying zone. The average lot area is determined by calculating the total site area devoted to dwelling units and dividing that figure by the proposed number of dwelling lots.

Accessory dwelling units are not included in this determination nor are tracts created for non-dwelling unit purposes such as open space, stormwater tracts, or access ways.

A lot that was created pursuant to this section may not be further divided unless the average lot size requirements are still met for the entire subdivision.

Other standards that affect lot sizes include the minimum density requirement – that subdivisions meet at least 80% of the density allowed by the zone. All cities within the Metro region are required to have a code provision that requires at least 80% minimum density as part of compliance with Title 1. The intent of the standard is to ensure that each jurisdiction provides housing supply for the region at predictable rates in accordance with their planned land uses. Jurisdictions are required to maintain or increase housing capacity by Title 1 of the Metro code, which is also supported and reinforced by Statewide Planning Goals and the City's own Comprehensive Plan.

The City also has minimum lot widths and depths, along with minimum setbacks and maximum lot coverage standards which provide uniformity and levels of certainty for city residents.

Other provisions of the City's code that affect subdivision layout and density are street connectivity requirements along with maximum block lengths. As required in the Regional Transportation Plan, the City requires public street connections every 530 feet maximum in order to provide connectivity in its street network.

These requirements create layout challenges for developers to lay out development sites in an efficient manner. Allowing lot sizes to vary within subdivisions provides flexibility to allow developers of property to meet minimum density requirements and fit lots which meet dimensional requirements of the zoning designation within the physical constraints of the development boundaries, streets, and environmentally sensitive areas. Throughout the region, local jurisdictions have various standards related to lot averaging. Some do not appear to allow lot averaging, while others have standards similar to Oregon City's. Below is a summary of what several other local jurisdictions allow:

Happy Valley: Allows lot reduction up to 10 percent of lot area when the overall subdivision meets the required average.

Flexible Lot Size. To allow creativity and flexibility in subdivision design and to address physical constraints, such as topography, existing development, significant trees and other natural and built features, the approval body may grant a ten (10) percent modification to the lot area and/or lot dimension (width/depth) standards in Chapter 16.22, provided that: the overall density of the subdivision does not exceed the allowable density of the district; the minimum lot size for single-family detached lots is not less than five thousand (5,000) square feet within eighty (80) percent of the net developable area of the subject development (and within the twenty (20) percent remainder area, lot sizes may decrease by a maximum of ten (10) percent); and the approval body finds that granting the modification allows for a greater variety of housing types or it improves development compatibility with natural features or adjacent land uses. In addition, the approval body may require that standard size lots be placed at the perimeter of the development where the abutting lots are standard size or larger; except that this provision shall not apply where the abutting lots are larger than twenty thousand (20,000) square feet.

Hillsboro: Allows lot size reductions for up to 20% of the lots in a subdivision, and lots can be reduced by up to 75% of the minimum required size.

Variations to reduce lot dimensions below the applicable base zone standard may be requested on up to 20% of the lots in a subdivision. Variations may be requested to reduce dimensions up to 75% of the minimum dimension of the applicable base zone. In the case of lot area, variations for "compact lots" must also include provision of "oversized" lots to the extent that the average of areas for all lots meets or exceeds the minimum lot size of the applicable base zone. Lot dimension variations below 75% of the applicable base zone standard shall be approved only through a Variance process.

West Linn: Offers lot averaging only in Planned Unit Developments.

Tigard: Standards are same as existing Oregon City standards – 20% reduction in size permitted.

Lot size may be averaged to allow lots less than the minimum lot size allowed in the applicable base zone provided the average lot area for all lots is not less than allowed by the applicable base zone. No lot created under this provision shall be less than 80 percent of the minimum lot size allowed in applicable base zone.

Beaverton: Allows outright lot reduction of up to ten percent on parcels 2 acres or less. Allows Type II adjustment process for reduction of lot size up to ten percent on parcels greater than 2 acres.

Sherwood: Allows reductions of up to 10% for any number of lots. Also limits maximum sizes (10% greater than underlying zone)

Lot size may be averaged to allow lots less than the minimum lot size allowed in the underlying zoning district subject to the following regulations:

- 1. The average lot area for all lots is not less than allowed by the underlying zoning district.*
- 2. No lot created under this provision shall be less than 90 % of the minimum lot size allowed in the underlying zoning district.*
- 3. The maximum lot size cannot be greater than 10 % of the minimum lot size.*

Lake Oswego: Lots may be reduced in area up to 20% only when land in development is dedicated as open space.

{STAFF REPORT TO BE UPDATED WITH PLANNING COMMISSION'S PREFERRED LOT AVERAGING AMENDMENTS HERE}

B. PUBLIC NOTICE

Public Notice was provided more than 20 days prior to the first evidentiary hearing via email to affected agencies, neighborhood associations and Oregon City boards and committees, and published. Notice of the proposed amendment was provided to a variety of groups and government agencies including, Metro and the Department of the Land Conservation and Development. A Measure 56 Notice sent to all properties within the Urban Growth Boundary in December of 2017 after multiple work sessions with the City Commission. The Planning Division held a meeting with the Citizen Involvement Committee on April 3, 2017, a meeting with the Development Stakeholders Group on May 4, 2017, and a Work Session with the Planning Commission on April 10, 2017 to discuss the proposal and how the proposed changes would affect properties. Comments regarding the proposal are attached.

C. DECISION-MAKING CRITERIA:

OREGON CITY MUNICIPAL CODE (OCMC)

Chapter 17.68 Zoning Changes and Amendments

17.68.010 Initiation of the amendment.

A text amendment to this title or the comprehensive plan, or an amendment to the zoning map or the comprehensive plan map, may be initiated by:

- A. A resolution by the commission;*
- B. An official proposal by the planning commission;*
- C. An application to the planning division presented on forms and accompanied by information prescribed by the planning commission.*

All requests for amendment or change in this title shall be referred to the planning commission.

Response: This request is for text amendments to the Oregon City Municipal Code and was initiated by the Planning Division on behalf of a request by the City Commission.

17.68.020 Criteria.

The criteria for a zone change are set forth as follows:

A. The proposal shall be consistent with the goals and policies of the comprehensive plan.

Statewide Planning Goals are also shown to indicate how the Oregon City Comprehensive Plan (OCCP) Goals and Policies implement the applicable Statewide Planning Goal.

STATEWIDE PLANNING GOAL 1 – CITIZEN INVOLVEMENT

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

OCCP Goal 1.1 Citizen Involvement Program

Implement a Citizen Involvement Program that will provide an active and systematic process for citizen participation in all phases of the land-use decision making process to enable citizens to consider and act upon a broad range of issues affecting the livability, community sustainability, and quality of neighborhoods and the community as a whole.

OCCP Policy 1.1.1

Utilize neighborhood associations as the vehicle for neighborhood-based input to meet the requirements of the Land Conservation and Development Commission (LCDC) Statewide Planning Goal 1, Citizen Involvement. The Citizen Involvement Committee (CIC) shall serve as the officially recognized citizen committee needed to meet LCDC Statewide Planning Goal 1.

OCCP Goal 1.2 Community and Comprehensive Planning

Ensure that citizens, neighborhood groups, and affected property owners are involved in all phases of the comprehensive planning program.

OCCP Policy 1.2.1

Encourage citizens to participate in appropriate government functions and land-use planning.

OCCP Policy 1.2.1

Encourage development and refinement of CIC and neighborhood association bylaws that will govern the groups' formation and operations.

OCCP Goal 1.3 Community Education

Provide education for individuals, groups, and communities to ensure effective participation in decision-making processes that affect the livability of neighborhoods.

OCCP Goal 1.4 Community Involvement

Provide complete information for individuals, groups, and communities to participate in public policy planning and implementation of policies.

OCCP Policy 1.4.1

Notify citizens about community involvement opportunities when they occur.

Finding: Complies as Proposed. The proposed code amendments to Lot Averaging were first identified by citizens whom came before the City Commission. The City Commission met to discuss this topic multiple times before providing direction to staff regarding these changes. The other proposed amendments were identified by staff as corrections and clarifications, and changes to processes to eliminate areas of conflict.

The amendments were presented to the Citizen Involvement Committee and the Development Stakeholders Group as well as in a work session with the Planning Commission prior to the first public hearing. In addition, the application will be posted on the City website, emailed to various entities including neighborhood associations and the Citizen Involvement Committee, and posted in a general circulation newspaper.

STATEWIDE PLANNING GOAL 2 – LAND USE PLANNING

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

OCCP Goal 2.1 Efficient Use of Land

Ensure that property planned for residential, commercial, office, and industrial uses is used efficiently and that land is developed following principles of sustainable development.

Finding: The proposed code amendments include clarifications that give applicants more certainty and clarity about city codes. {FINDINGS REFLECTING FINAL PLANNING COMMISSION RECOMMENDATION REGARDING LOT AVERAGING TO BE INSERTED HERE}

OCCP Goal 2.4 Neighborhood Livability

Provide a sense of place and identity for residents and visitors by protecting and maintaining neighborhoods as the basic unit of community life in Oregon City while implementing the goals and policies of the other sections of the Comprehensive Plan.

Finding: {FINDINGS REFLECTING FINAL PLANNING COMMISSION RECOMMENDATION REGARDING LOT AVERAGING TO BE INSERTED HERE}

STATEWIDE PLANNING GOAL 3: AGRICULTURAL LANDS

Finding: Complies as Proposed. The proposed amendments would not preclude the use of agricultural lands.

STATEWIDE PLANNING GOAL 4: FOREST LANDS

Finding: Complies as Proposed. The proposed amendments would not preclude the use of forest lands.

STATEWIDE PLANNING GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

Statewide Planning Goal 5 requires that open spaces and natural, scenic, and historic resources be protected.

OCCP Goal 5.3 Historic Resources

Encourage the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City.

Finding: Complies as Proposed. The proposed amendments would not preclude the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City.

Goal 5.4 Natural Resources

Identify and seek strategies to conserve and restore Oregon City's natural resources, including air, surface and subsurface water, geologic features, soils, vegetation, and fish and wildlife, in order to sustain quality of life for current and future citizens and visitors, and the long-term viability of the ecological systems.

Finding: Complies as Proposed. The proposed amendments include an amendment to exemptions in the Natural Resources Overlay Zone, clarifying how temporary disturbance areas should be treated. No material changes to how the overlay zone is regulated are proposed.

STATEWIDE PLANNING GOAL 6: AREAS SUBJECT TO NATURAL HAZARDS

To protect people and property from natural hazards.

Finding: Complies as Proposed. The overlay districts, such as the Natural Resource Overlay District, Flood Management Overlay, and Geologic Hazards Overlay will apply regardless of the proposed changes.

STATEWIDE PLANNING GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS

To protect people and property from natural hazards.

OCCP Goal 7.1 Natural Hazards

Protect life and reduce property loss from the destruction associated with natural hazards

Finding: Complies as Proposed. The proposed amendments will not affect natural hazards overlay districts. The overlay districts, such as the Flood Management Overlay, and Geologic Hazards Overlay will apply regardless of the proposed changes.

STATEWIDE PLANNING GOAL 8: RECREATIONAL NEEDS

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

Finding: Complies as Proposed. The proposed amendments do not impact parks and recreation.

STATEWIDE GOAL 9: ECONOMIC DEVELOPMENT

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

OCCP Policy 9.2.1

Seek input from local businesses when making decisions that will have a significant economic impact on them.

Finding: Complies as Proposed. The proposal was sent to the Chamber of Commerce, Oregon City Business Alliance, as well as the Development Stakeholder Group for comments.

OCCP Policy 9.2.2

Carefully consider the economic impacts of proposed programs and regulations in the process of implementing the City's Comprehensive Plan.

Finding: Complies as Proposed. The proposal includes clarifications that will provide greater levels of certainty for developers of property. The amendments also streamline some aspects of the development review process.

OCCP Policy 9.2.3

Simplify, streamline, and continuously improve the permitting and development review process.

Finding: Complies as Proposed. The proposal includes clarifications that will provide greater levels of certainty for developers of property. The amendments also streamline some aspects of the development review process.

STATEWIDE PLANNING GOAL 10: HOUSING

To provide for the housing needs of citizens of the state.

OCCP Policy 10.1.4

Aim to reduce the isolation of income groups within communities by encouraging diversity in housing types within neighborhoods consistent with the Clackamas County Consolidated Plan, while ensuring that needed affordable housing is provided.

OCCP Policy 10.1.7

Use a combination of incentives and development standards to promote and encourage well-designed single-family subdivisions and multi-family developments that result in neighborhood livability and stability.

OCCP Goal 10.1 Diverse Housing Opportunities

Provide for the planning, development and preservation of a variety of housing types and lot sizes.

Finding: The proposed code amendments limit lot averaging in subdivisions. The lot averaging provisions apply to new subdivisions within the R-10, R-8, R-6, R-5 and R-3.5 zones. Currently, lot sizes are permitted to vary and be less than the minimum zone average by 20%. {FINDINGS REFLECTING FINAL PLANNING COMMISSION RECOMMENDATION REGARDING LOT AVERAGING TO BE INSERTED HERE}

STATEWIDE PLANNING GOAL 11: PUBLIC FACILITIES AND SERVICES

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Finding: Complies as Proposed. The proposed amendments have no impact on public facilities.

STATEWIDE PLANNING GOAL 12: TRANSPORTATION

To provide and encourage a safe, convenient and economic transportation system.

Finding: Complies as Proposed. The proposed amendments have no impact on transportation.

B. That public facilities and services (water, sewer, storm drainage, transportation, schools, police and fire protection) are presently capable of supporting the uses allowed by the zone, or can be made available prior to issuing a certificate of occupancy. Service shall be sufficient to support the range of uses and development allowed by the zone.

Finding: Complies as Proposed. The proposal does not change uses allowed in any zoning districts or the ability of services and facilities.

C. The land uses authorized by the proposal are consistent with the existing or planned function, capacity and level of service of the transportation system serving the proposed zoning district.

Response: {FINDINGS REFLECTING FINAL PLANNING COMMISSION RECOMMENDATION REGARDING LOT AVERAGING TO BE INSERTED HERE}

D. Statewide planning goals shall be addressed if the comprehensive plan does not contain specific policies or provisions which control the amendment.

Finding: See responses above. The Oregon City Comprehensive Plan addresses the Statewide Planning Goals, as shown above under the findings in this staff report.

D. RECOMMENDATION

{FINDINGS REFLECTING FINAL PLANNING COMMISSION RECOMMENDATION REGARDING LOT AVERAGING TO BE INSERTED HERE}

E. EXHIBITS

1. Narrative and Code Responses
2. Presentation from February 12, 2018
3. Proposed Amendments to the Oregon City Municipal Code
4. Public Comments