



**Oregon**

Theodore R. Kubongski, Governor

**Department of Land Conservation and Development**

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Salem, OR 97301-2540

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**NOTICE OF ADOPTED AMENDMENT**

2/8/2010

**TO:** Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

**FROM:** Plan Amendment Program Specialist

**SUBJECT:** City of Lake Oswego Plan Amendment  
DLCD File Number 002-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

**DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL:** Friday, February 19, 2010

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

**Cc:** Sarah Selden, City of Lake Oswego  
Gloria Gardiner, DLCD Urban Planning Specialist  
Jennifer Donnelly, DLCD Regional Representative

<paa> YA



**NOTICE OF ADOPTION**  
 Must be filed within 5 Working Days  
 See OAR 660-18-040

**Jurisdiction** City of Lake Oswego **Local File No.** LU 09-0004 (Ordinance 2543)  
**Date Mailed** 01/29/10 **Date of Approval** 01/26/10  
**Date Proposal was Provided to DLCD** 02/27/09  
**Type of Adopted Action (Check all that apply)**

**Comprehensive Plan Amendment**       **Land Use Regulation Amendment**       **New Land Use Regulation**

Please complete (A) for text amendments and (B) for map amendments

**A. Summary of Adopted Action** (A brief description is adequate. Please avoid highly technical terms and zone code abbreviations. Please do not write "see attached"):

The City Council approved Ordinance 2543, an ordinance of the City of Lake Oswego amending the Community Development Code, Article 50.06 (Residential- Low Density R-0, R-2, R-3, and R-5 Zones), Article 50.08 (Residential – Low Density R-7.5, R-10, and R-15 Zones), Article 50.13A (Public Functions Zone), and Article 50.69 (Conditional Use Standards) to amend the maximum lot coverage for schools.

The primary objectives of the code amendments are to promote equity in the application of development standards for public and private schools and to ensure compatibility between development and the existing and desired neighborhood character.

**Describe how the Adopted Amendment Differs from the Proposal** (If it is the same, write "Same". If it was not proposed, write "N/A".):

Same

**B. If the Action Amends the Plan or Zone Map, Provide the Following Information for Each Area Which was Changed** (Provide a separate sheet for each area. Multiple sheets can be submitted as a single adoption action. Please include street address whenever possible. Do not use tax lot number alone.):

**Previous Plan Designation:** N/A      **New Plan Designation:** N/A

**Previous Zone:** N/A      **New Zone:** N/A

**Location:** citywide

**Acreage involved:**

**Does this change include a Goal exception?**       Yes     No

**For Residential Changes, Please Indicate the Change in Allowed Density in Units Per Net Acre**

**Previous Density:** N/A      **New Density:** N/A



**If Notice of Proposal was not sent to DLCD 45 Days Prior to the Final Hearing Please Indicate Why:**

Statewide Planning Goals are Inapplicable  
 Emergency Circumstances Required Expedited Review

**List Statewide Goals Which May Apply:**

Goal 1

**List any State or Federal Agencies, Local Government or Local Special Service Districts Which May be Interested in or Impacted by the Adoption:**

Metro

**Direct Questions and Comments to:**

Johanna Hastay, Associate Planner  
City of Lake Oswego  
P. O. Box 369  
Lake Oswego, OR 97034  
(Phone) 503-534-5740

**Send To:** Department of Land Conservation and Development  
635 Capitol St. NE, Suite 150  
Salem, OR 97301-2540

**Attach one (1) copy of the Adopted Action to this form and/or three (3) copies of Bound Materials and Maps larger than 8-1/2 by 11 inches.**

**Note:** If more copies of this form are needed, please contact the DLCD office at 503-373-0050, or this form may be duplicated on green paper. Failure to provide notice of an adopted plan or land use regulation amendment results in an extension of the appeal period. Appeals may be filed within 21 days of the date the proposal is mailed to DLCD. Statutes require mailing within 5 days of the action becoming final (See OAR 660-18-040).

**\*\*\*FOR DLCD OFFICE USE\*\*\***

**DLCD File Number** \_\_\_\_\_

**ORDINANCE NO. 2543**

**AN ORDINANCE OF THE LAKE OSWEGO CITY COUNCIL AMENDING LOC CHAPTER 50 (COMMUNITY DEVELOPMENT CODE), SECTION 50.08.040 TO INCREASE THE MAXIMUM LOT COVERAGE FOR SCHOOLS IN THE R-7.5 TO R-15 ZONES, AND AMENDING SECTION 50.13A.025 TO DECREASE THE MAXIMUM LOT COVERAGE FOR SCHOOLS IN THE PF ZONE, AND ADOPTING FINDINGS (LU 09-0004).**

The City of Lake Oswego ordains as follows:

**Section 1.** Section 50.08.040 of the Lake Oswego Code is hereby amended by adding the text shown in **bold, underlined** type and deleting the text shown in ~~strikethrough~~ type, as follows:

**Section 50.08.040 Lot Coverage and Floor Ratio Area (FAR).**

1. ~~Except as set forth in LOC Article 50.30,~~ Lot coverage shall not exceed 35% for a primary structure ≤ 22 feet in height or 25% for a primary structure > 22 feet in height, **except:**

**a. As set forth in LOC Article 50.30.**

**b. Lot coverage shall not exceed 30% for a school built to accommodate at least 100 students and that has at least two grades within the range of K-12.**

**c. Lot coverage shall not exceed 30% for a mixed use development that includes a school built to accommodate at least 100 students and that has at least two grades within the range of K-12.**

2. Floor ratio areas shall not exceed the standards as shown in Table 50.08.040 below:

**TABLE 50.08.040**

| Lot Size<br>(Square Feet) | Maximum Floor Area Ratio (FAR) |      |      |
|---------------------------|--------------------------------|------|------|
|                           | R-7.5                          | R-10 | R-15 |
| < 5,000                   | .6                             | .6   | .6   |
| ≥ 5,001 < 6,000           | .55                            | .55  | .55  |
| ≥ 6,000 < 7,000           | .5                             | .5   | .5   |
| ≥ 7,000 < 8,000           | .45                            | .45  | .45  |
| ≥ 8,000 < 9,000           | .4                             | .4   | .44  |
| ≥ 9,000 < 10,000          | .39                            | .4   | .43  |
| ≥ 10,000 < 11,000         | .38                            | .4   | .42  |
| ≥ 11,000 < 12,000         | .37                            | .39  | .41  |
| ≥ 12,000 < 13,000         | .36                            | .38  | .4   |
| ≥ 13,000 < 14,000         | .35                            | .37  | .39  |
| ≥ 14,000 < 15,000         | .34                            | .36  | .38  |
| ≥ 15,000 < 16,000         | .33                            | .35  | .37  |
| ≥ 16,000 < 17,000         | .32                            | .34  | .36  |
| ≥ 17,000 < 18,000         | .31                            | .33  | .35  |
| ≥ 18,000 < 19,000         | .30                            | .32  | .34  |
| ≥ 19,000 < 20,000         | .29                            | .31  | .33  |
| ≥ 20,001                  | .28                            | .3   | .32  |

3. In cluster developments, lot coverage requirements may be applied with reference to the project as a whole and not on a lot by lot basis.
4. The floor area of a garage area shall be exempt from lot coverage calculations:
  - a. Ground floor area of detached garage:
    - i. For lots less than or equal to 10,000 square feet in area - up to 200 square feet.
    - ii. For lots greater than 10,000 square feet in area - up to 400 square feet.
  - b. Floor area of attached garage located at or rear of the primary structure or for side-loading garages - up to 200 square feet.
5. Habitable areas of detached accessory structures that would normally be counted as floor area, shall be exempt from floor area calculations:
  - a. For lots less than or equal to 10,000 square feet in area - up to 200 square feet.
  - b. For lots greater than 10,000 square feet in area - up to 400 square feet.
6. FAR for uses other than single family dwellings and their accessory uses shall be as follows:
  - a. The FAR for uses listed as conditional uses shall be established as part of the conditional use process.
  - b. The FAR for other non-residential uses shall be no greater than 1:1.

**Section 2.** Section 50.13A.025 of the Lake Oswego Code is hereby amended by adding the text shown in **bold, underlined** type and deleting the text shown in ~~striketrough~~ type, as follows:

**Section 50.13A.025 Site Development Limitations.**

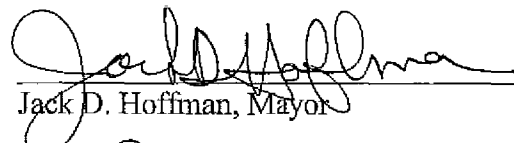
1. Setbacks: The following setbacks shall be required for the construction of any structure in this zone:
  - a. The setback of any respective yard (front, side, street side, or rear) shall be equal to the minimum required yard for the property abutting the respective yard's lot line, except as provided in subsections (1)(b) and (1)(c), below.
  - b. In cases where the lot line of the PF-zoned property abuts properties with two or more different yard requirements, the required setback for the yard abutting the properties with the two or more different yard requirements shall be equal to the average of the minimum yards required for the two or more abutting properties.
  - c. Additional setback requirements for any yard may be established through the Conditional Use Permit process for any development that is subject to Conditional Use approval, pursuant to LOC 50.69.010 (2)(b).
2. Height of structure: Except as otherwise permitted by LOC 50.22.015, the maximum height of any portion of a structure shall be the greater of:
  - a. 35 feet, or
  - b. A height as determined by the ratio of one foot in height for every 3.5 feet of distance from the portion of the structure to the lot line of the nearest residentially zoned property, to a maximum height of 75 feet.
3. Lot coverage: The maximum lot coverage shall not exceed 50%, except:
  - a. **Lot coverage shall not exceed 35%** if the lot adjoins residentially zoned properties on two or more sides, ~~in which event the lot coverage shall not exceed 35%;~~
  - b. **Lot coverage shall not exceed 30% for a school, including a mixed use development with a school as a component.**
4. All development in any Public Function zone will be developed under a unified site plan. The site plan will identify circulation patterns and access points, method of provision of public

services and general placement of lots and structures, general area and type of uses. Proposals with multiple ownerships shall include a written agreement of all owners that development of the site will occur pursuant to the site plan approved.

**Section 3.** The City Council hereby adopts the Findings and Conclusions (LU-09-0004-1716) attached as Exhibit 1.

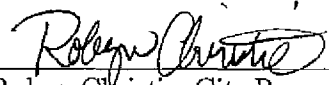
Enacted at the regular meeting of the City Council of the City of Lake Oswego held on the 26th day of January, 2010.

AYES: Mayor Hoffman, Johnson, Hennagin, Jordan, Moncrieff, Tierney  
NOES: Olson  
ABSTAIN: none  
EXCUSED: none

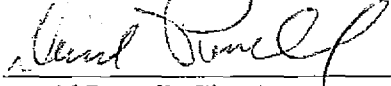
  
\_\_\_\_\_  
Jack D. Hoffman, Mayor

Dated: Jan 28, 2010

ATTEST:

  
\_\_\_\_\_  
Robyn Christie, City Recorder

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David Powell, City Attorney



1 **B. Statewide Planning Goal or Administrative Rule Adopted Pursuant to**  
2 **ORS Chapter 197**

3  
4 Goal 1 Citizen Involvement  
5 Goal 2 Land Use Planning

6  
7 **C. City of Lake Oswego Comprehensive Plan:**

8  
9 Goal 1 Citizen Involvement, Policies 1, 5, and 10  
10 Goal 2 Land Use Planning, Policies 4, 7, and 23

11  
12 **FINDINGS AND REASONS**

13 The City Council incorporates the staff report dated July 31, 2009 for LU 09-0004 (with  
14 all exhibits), together with the Council Staff Reports dated October 15, 2009, November 16,  
15 2009 and January 13, 2010 (with all exhibits and supplemental staff reports), as support for its  
16 decision, together with the minutes of the City Council meeting of December 1, 2009,  
17 supplemented by the further findings and conclusions set forth herein. In the event of any  
18 inconsistency between the supplementary matter herein and incorporated materials, the matter  
19 herein controls. To the extent they are consistent with the approval granted herein, the City  
20 Council adopts by reference its oral deliberations on this matter.

21 Following are the supplementary findings and conclusions of the City Council:

22 The issues that initially led to the Planning Commission's consideration and subsequent  
23 recommendation in this matter arose when representatives of Our Lady of the Lake Parish and  
24 School questioned why the Community Development Code limits schools in low density  
25 residential zones to 25% lot coverage (if primary structures exceed 22 feet in height) while

26 ///



**EXHIBIT 1**  
Ordinance No. 2543

1 schools in a Public Function (PF) zone abutting residential zones are allowed 35% lot coverage.<sup>1</sup>  
2 Although both private and public schools are allowed as conditional uses in low-density  
3 residential zones, all existing public schools were included within PF Zones when that zone  
4 designation was created in 2002. Private uses (including private schools) are not permitted in the  
5 PF Zone. Our Lady of the Lake representatives and others characterize the differing lot coverage  
6 limitations as unfair and inequitable. It was also has been suggested that these differing  
7 regulations amount to treating religious institutions on less than equal terms with non-religious  
8 institutions in violation of the federal Religious Land Use and Institutionalized Persons Act of  
9 2000 (RLUIPA).<sup>2</sup>

10 The Planning Commission considered a number of options, including:

- 11 1. Retaining the existing Code language;
- 12 2. Increasing the allowed lot coverage for schools in low-density residential zones to  
13 35%;
- 14 3. Lowering the allowed lot coverage for schools in PF zones to 25%;
- 15 4. Establishing lot coverage for schools in both residential and PF zones exclusively  
16 through the conditional use process;
- 17 5. Establishing a new 30% lot coverage limitation for schools in both low-density  
18 residential and PF zones; or
- 19 6. Creating a new Institutional Zone for both public and private schools.

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<sup>1</sup> LOC 50.08.040 (1) (pertaining to Low Density R-7.5, R-10 and R-15 Zones) provides that:  
"Except as set forth in LOC Article 50.30, lot coverage shall not exceed 35% for a primary  
structure ≤ 22 feet in height or 25% for a primary structure > 22 feet in height."

LOC 50.13A.025 (3) (pertaining to lot coverage for uses in PF Zones) states:  
The maximum lot coverage shall not exceed 50%, except if the lot adjoins residentially zoned  
properties on two or more sides, in which event the lot coverage shall not exceed 35%."

<sup>2</sup> 42 USC §§ 2000cc *et seq.*

**EXHIBIT 1**  
Ordinance No. 2543

1           The Planning Commission found that any standard that limits the size of a school,  
2 including lot coverage limitations, generally helps to manage impacts of a school on the  
3 adjoining neighborhood. It also found that there is no significant difference in the impacts of  
4 public and private schools that result from the degree of lot coverage, and concluded that lot  
5 coverage limitations should be similar for both types of schools.

6           The Planning Commission also found that the 35% lot coverage limitation established at  
7 the time the PF zone designation was created was not targeted specifically to schools, but instead  
8 was regarded as appropriate for all uses in PF zones that abut residential zones. The Commission  
9 noted that no public school in the city currently exceeds 25% lot coverage, and pointed to a lack  
10 of evidence in the record as to why public schools would need 35% lot coverage to meet future  
11 expansion needs. For these reasons, the Planning Commission recommended that the City  
12 Council address the inequities between public and private schools by adopting Option #3, above,  
13 amending the Code to reduce the maximum lot coverage for schools in PF zones to 25%.

14           Although there are many differences between public and private schools, the City Council  
15 agrees with the Planning Commission that there is a lack of evidence of significant differences in  
16 the type of land use impacts that can be addressed through lot coverage limitations.

17           The studies forming the basis for the statistics in the Institute of Transportation Engineers  
18 Trip Generation Manual, which indicate a difference in the number of vehicle trips generated by  
19 public and private schools analyze only peak hours of use. Arguably, public schools tend to be  
20 used more heavily during off peak times than private schools. Furthermore, the private school  
21 data used in the ITE Manual was based upon only 10 case studies, causing the editors to urge

**EXHIBIT 1**  
Ordinance No. 2543

1 caution when using the statistics. None of the data are specific to Lake Oswego schools. It  
2 would be inappropriate to rely upon these statistics to justify different lot coverage standards.

3       Nothing in the record or the legislative history indicates that the adoption of the current  
4 blanket lot coverage limitation for all uses in the PF zone was motivated by a desire for different  
5 lot coverage regulations for public and private schools, nor does the history disclose a rationale  
6 for making that distinction. Because there is a lack of substantial evidence that private schools  
7 have special impacts necessitating more stringent lot coverage limitations, the City Council  
8 concludes that similar coverage limitations should be established for both types of schools.<sup>3</sup>

9       The Planning Commission concluded that reducing maximum lot coverage for public  
10 schools to 25% would nevertheless preserve adequate opportunities to expand capacity as  
11 necessary. The City Council finds that, although it is true that most of the existing public school  
12 sites in the city have well below 25% lot coverage, the issue is not simply whether there is  
13 adequate capacity to handle future district-wide growth in the number of students. School district  
14 representatives testified that the uncertainty of future state financial support makes it essential for  
15 the school district to retain flexibility as to how it may deliver services. This includes preserving  
16 the opportunity to address budget shortfalls by consolidating schools if necessary.<sup>4</sup> Reducing  
17 public schools' lot coverage opportunities from 35% to 25% could unduly limit this flexibility.

18       The City Council finds that it is appropriate to adopt a lot coverage limitation of 30% for  
19 schools in both the PF and low-density residential zones (similar to Option 5, above). This

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<sup>3</sup> As a result, there is no need for the Council to address whether the current distinction between lot coverage limitations for *public* and *private* schools also amounts to a violation of the RLUIPA prohibition against treating *religious* institutions on less than equal terms with *non-religious* institutions.

<sup>4</sup> School District representatives emphasized that there is no current plan to consolidate schools.

1 achieves equity between public and private schools while avoiding the more significant increases  
2 in impacts to adjacent neighborhoods that might result from a 35% limit, and simultaneously  
3 avoids a significant reduction of future options for public schools.

4 Residents have expressed valid concern that, if a small day care or pre-school operating  
5 in a building constructed as a single-family house were to use the enhanced school lot coverage  
6 allowance to expand the house to cover 30% of the lot, and later stopped operating as a “school,”  
7 the neighborhood would be left with an oversized non-conforming residential structure. For this  
8 reason the increased lot coverage opportunity in low-density residential zones should apply only  
9 to “institutional” school structures, not single family houses that serve small groups of children.  
10 Consequently, the City Council finds that the 30% lot coverage limitation in low-density  
11 residential zones should apply only to schools built to accommodate at least 100 students and  
12 that have at least two grades within the range of K-12.

13 **CONCLUSION**

14 The City Council concludes that LU 09-0004-1716, modified to be consistent with these  
15 findings, complies with all applicable criteria, including the referenced provisions of the  
16 Community Development Code, the City’s Comprehensive Plan, and relevant Statewide  
17 Planning Goals. The City Council concludes that an ordinance should be enacted amending the  
18 Community Development Code to establish 30% maximum lot coverage for schools in PF zones,  
19 as well as for schools in low-density residential zones that are built to accommodate at least 100  
20 students and that have at least two grades within the range K-12.

21 ///





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