



AGENDA

April 9, 2024

PLANNING COMMISSION

milwaukieoregon.gov

Hybrid Meeting Format: The Planning Commission will hold this meeting both in person at City Hall and through Zoom video. The public is invited to watch the meeting in person at City Hall in the community room on the 1st floor. The meeting will also be recorded and broadcasted later on the city's [YouTube channel](#).

If you wish to provide comments, the city encourages written comments via email at planning@milwaukieoregon.gov. Written comments should be submitted before the Planning Commission meeting begins to ensure that they can be provided to the Planning Commissioners ahead of time. To speak during the meeting, visit the meeting webpage (<https://www.milwaukieoregon.gov/planning/planning-commission-2>) and follow the Zoom webinar login instructions.

1.0 Call to Order – Procedural Matters — 6:30 PM

- 1.1 Native Lands Acknowledgment

2.0 Planning Commission Minutes – Motion Needed

- 2.1 February 27, 2024
- 2.2 March 12, 2024

3.0 Information Items

4.0 Audience Participation — This is an opportunity for the public to comment on any item not on the agenda

5.0 Community Involvement Advisory Committee (CIAC)

6.0 Hearing Items

- 6.1 ZA-2023-006 Title 17 Code Amendments

Summary: Title 17 Land Division proposed code amendments

Staff: Senior Planner Vera Koliias

7.0 Work Session Items

- 7.1 Natural Resources Code Amendments

Summary: Tree Code Coordination

Staff: Senior Planner Brett Kelter

8.0 Planning Department Other Business/Updates

9.0 Forecast for Future Meetings

April 23, 2024

- 1. Hearing Item :
- 2. Work Session Item : Natural Resources code amendments (WQR standards)

May 14, 2024

- 1. Hearing Item :
- 2. Work Session Item : Draft TSP Goals and Policies

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan.

1. **PROCEDURAL MATTERS.** If you wish to register to provide spoken comment at this meeting or for background information on agenda items please send an email to planning@milwaukieoregon.gov.
2. **PLANNING COMMISSION and CITY COUNCIL MINUTES.** City Council and Planning Commission minutes can be found on the City website at www.milwaukieoregon.gov/meetings.
3. **FORECAST FOR FUTURE MEETINGS.** These items are tentatively scheduled but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
4. **TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue an agenda item to a future date or finish the item.

Public Hearing Procedure

Those who wish to testify should attend the Zoom meeting posted on the city website, state their name and city of residence for the record, and remain available until the Chairperson has asked if there are any questions from the Commissioners. Speakers are asked to submit their contact information to staff via email so they may establish standing.

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY.** Comments or questions from interested persons and testimony from those in support or opposition of the application.
5. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
6. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
7. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience but may ask questions of anyone who has testified.
8. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
9. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, any person may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502. To request Spanish language translation services email espanol@milwaukieoregon.gov at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the city's YouTube channel and Comcast Channel 30 in city limits.

Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a ocr@milwaukieoregon.gov o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a espanol@milwaukieoregon.gov al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el canal de YouTube de la ciudad y el Canal 30 de Comcast dentro de los límites de la ciudad.

Milwaukie Planning Commission:

Jacob Sherman, Chair
Joshua Freeman, Vice Chair
Aaron Carpenter
Joseph Edge
Amy Erdt
Ernestina Fuenmayor
Will Mulhern

Planning Department Staff:

Laura Weigel, Planning Manager
Brett Kelter, Senior Planner
Vera Koliass, Senior Planner
Adam Heroux, Associate Planner
Ryan Dyar, Assistant Planner
Petra Johnson, Administrative Specialist II



CITY OF MILWAUKIE

PLANNING COMMISSION MINUTES

City Hall Council Chambers
10501 SE Main Street
www.milwaukieoregon.gov

February 27, 2024

Present: Jacob Sherman, Chair
Joshua Freeman, Vice Chair
Aaron Carpenter
Joseph Edge
Lauren Loosveldt
Will Mulhern

Staff: Ryan Dyar, Assistant Planner
Laura Weigel, Planning Manager

Absent: Amy Erdt

(00:06:51)

1.0 Call to Order — Procedural Matters*

Chair Jacob Sherman called the meeting to order at 6:30 p.m., read the conduct of meeting format into the record, and Native Lands Acknowledgment.

Note: The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.

(00:07:21)

2.0 Planning Commission Minutes

The January 9, 2024, and January 23, 2024 minutes were approved as presented.

(00:09:00)

3.0 Information Items

Planning Manager, Laura Weigel let the public know about the open house scheduled for Thursday, February 29, 2024 which will include information about the Highway 224 improvements, the Monroe St Greenway, Transportation System Plan updates, and information about the Kellogg Creek project. **Chair Sherman** added that there will be a special report at city council regarding the 29th Ave neighborhood greenway.

(00:10:21)

4.0 Audience Participation

No information was presented for this portion of the meeting.

(00:10:38)

5.0 Community Involvement Advisory Committee (CIAC)

No information was presented for this portion of the meeting.

(00:11:32)

6.0 Work Session Items

(00:11:47)

6.1 Transportation System Plan Update

Planner Manager, Laura Weigel, presented a high-level overview of the TSP as part of the staff report via a power point presentation. Both are included in the meeting packet. **Commissioner Joseph Edge** discussed his contributions and the conversation had at the last TSPAC meeting; **Edge** shared his thoughts on the relationship of the goals and policies for the TSP with the Comprehensive Plan. **Weigel** and **Assistant Planner, Ryan Dyar** explained how the current TSP goals speak to the Comprehensive Plan. **Edge** and planning staff discussed the need for more consistent structure and language for the goals and policies in chapter 12. **Chair Sherman** inquired about the financially constrained capital improvement project list. Staff and the commission discussed how the TSP goals and policies relate to the capitol improvement project lists.

(00:51:02)

6.2 Climate Friendly Equitable Communities Update

Assistant Planner, Ryan Dyar, presented the update as a staff report via a power point presentation. Both are included in the meeting packet. **Edge** spoke about being intentional with the design of new large parking lots as well as tree canopy goals. **Chair Sherman** voiced support for returning to the quarter acre size and discussed the redevelopment of existing lots. **Dyar** went in depth with some of the proposed amendments that relate to the commissioners' concerns. **Commissioner Aaron Carpenter** asked about a buildable lands analysis. **Weigel** replied that there is an analysis and very few large parking lots. The commission discussed size, improvement standards, and funding options for parking lots. **Dyar** moved onto an overview of the new bicycle parking standards. The commission discussed the non-CFEC related standard changes since recommendation. **Edge** spoke about the need to remove job titles from the code because they change over time.

(01:46:45)

7.0 Planning Department/Planning Commission Other Business/Updates

Edge updated the commission on the recent Metro Technical Advisory Committee meeting. Staff and the Commission thanked **Commissioner Lauren Loosveldt** for her service on the DLC and Planning Commission.

(01:50:12)

8.0 Forecast for Future Meetings

March 12, 2024,	Hearing Item:	Hubs Code Amendments CFEC Code Amendments
March 26, 2024,	Hearing Item:	Title 17 Code Amendments

Meeting adjourned at approximately 8:30 p.m.

Respectfully submitted,
Petra Johnson, Administrative Specialist II



CITY OF MILWAUKIE

PLANNING COMMISSION MINUTES

City Hall Council Chambers
10501 SE Main Street
www.milwaukieoregon.gov

March 12, 2024

Present: Jacob Sherman, Chair
Aaron Carpenter
Joseph Edge
Tina Fuenmayor
Will Mulhern

Staff: Ryan Dyar, Assistant Planner
Justin Gericke, City Attorney
Adam Heroux, Associate Planner
Vera Koliass, Senior Planner

Absent: Joshua Freeman, Vice Chair
Amy Erdt

(00:00:18)

1.0 Call to Order — Procedural Matters*

Chair Sherman called the meeting to order at 6:30 p.m., read the conduct of meeting format into the record, and Native Lands Acknowledgment.

Note: The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.

(00:03:38)

2.0 Planning Commission Minutes

No information was presented for this portion of the meeting.

(00:03:39)

3.0 Information Items

Senior Planner Vera Koliass & Assistant Planner Ryan Dyar let the public know about the upcoming Transportation System Plan event scheduled for Thursday March 21st. **Dyar** gave a quick overview of the TSP and the agenda for the event.

(00:06:16)

4.0 Audience Participation

Milwaukie Resident, **Bernie Stout**, asked about the implementation of the Monroe St Greenway. **Senior Planner Vera Koliass** read the project updates from the city's website and referred **Stout** to the Engineer assigned to the project.

(00:12:05)

5.0 Community Involvement Advisory Committee (CIAC)

Commissioner Aaron Carpenter requested that staff present an overview of the role of

the CIAC as well as an update on the status of the Comprehensive Plan and other engagement activities.

(00:14:25)

6.0 Hearing Items

(00:14:26)

6.1 ZA-2024-001 Neighborhood Hubs Code Amendments

Senior Planner, Vera Kolias, announced the applicable sections of the Milwaukie Municipal Code (MMC): MMC 19.902, MMC 19.1008. **Assistant Planner Adam Heroux & Kolias** presented the staff report via a power point presentation. Both are included in the meeting packet.

Carpenter asked if there is a deadline for the recommendation to get to council. **Kolias** replied that there is not a deadline, but staff does have the public hearing tentatively scheduled for an upcoming council meeting. **Commissioner Will Mulhern** clarified the content of the commission's recommendation. **Chair Sherman** closed the public testimony.

Commission Discussion:

The Commission expressed their support to recommend the amendments for approval as proposed. **Carpenter** motioned to approve ZA-2024-001 as presented. **Mulhern** seconded the motion. The motion was passed with a 5-0 vote.

(01:03:42)

6.2 ZA-2022-005 Climate Friendly Equitable Communities Code Amendments

Assistant Planner, Ryan Dyar announced the applicable sections of the Milwaukie Municipal Code (MMC): MMC 19.902, MMC 19.1000. **Dyar** presented the staff report via a power point presentation. Both are included in the meeting packet.

Commissioner Joseph Edge asked staff if they have referenced the long- and short-term parking quantities at the Park Ave. Park & Ride. **Dyar** replied that they did not and that there may have been recent changes to that specific lot. **Chair Sherman** inquired about quantities at the Tacoma / Johnson Creek parking lot. **Dyar** explained how those numbers were negotiated with TriMet. **Carpenter** asked if the city has definitions for the three newly proposed transit centers. **Dyar** replied that they are recognized as TriMet developments. **Chair Sherman** asked about the word choice 'excavation' versus the terms disturbed or modified. **Dyar** explained the verbiage was recommended by the state. **Chair Sherman** closed the public testimony.

Commission Discussion:

Edge expressed his appreciation for the changes staff has made since the work session. Regarding park & rides, transit centers, and light rail stations, **Edge** asked the commission if they should change the language from 'light rail station' to 'high-capacity transit station'. **Mulhern** and **Chair Sherman** agreed with **Edge's** sentiments. **Edge** motioned to approve ZA-2022-005 with amendments as

requested for transit centers, park and rides, and high-capacity transit stations.
Carpenter seconded the motion. The motion was passed with a 5-0 vote.

(01:42:04)

7.0 Planning Department/Planning Commission Other Business/Updates

Chair Sherman reminded the public about the Transportation System Plan workshop happening next week.

(01:42:32)

8.0 Forecast for Future Meetings

March 26, 2024,	Hearing Item:	Title 17 Land Division Code Amendments
	Work Session:	Natural Resource Code Amendments

April 9, 2024,	No items at this time
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Meeting adjourned at approximately 8:15 p.m.

Respectfully submitted,

Petra Johnson, Administrative Specialist II



CITY OF MILWAUKIE

To: Planning Commission
Through: Laura Weigel, Planning Manager
From: Vera Kalias, Senior Planner
Date: April 2, 2024, for April 9, 2024, Public Hearing
Subject: File #ZA-2023-006 – Title 17 (Land Division) code amendments

ACTION REQUESTED

Open the public hearing for land use file #ZA-2023-006. Discuss the proposed amendments to the Milwaukie Municipal Code (MMC) Title 19 (Zoning) and Title 17 (Land Division), take public testimony, and provide direction to staff regarding any desired revisions to the proposed amendments.

The requested action is that the Planning Commission recommend City Council approval of file #ZA-2023-006 and adoption of the proposed ordinance and recommended Findings in Support of Approval found in Attachment 1.

BACKGROUND INFORMATION

Over the course of several years, Planning Department staff has been tracking issues with current zoning code language and has made recommendations for amended language. These items have been identified through a variety of means, including:

- Questions about specific code language that have been raised by the public on multiple occasions and that are not easily answered;
- Changes in state law requiring amendments to local codes;
- Implementation of the comprehensive plan; and
- Code interpretation applications.

Over the past several months, planning staff has created categories for code amendment packages to help organize the various amendments and to help with the overall department workplan:

- **Large efforts** which will each be its own project – examples include: Willamette Greenway Overlay re-write (MMC 19.401); Natural Resources code re-write (MMC 19.402); Historic Preservation Overlay Zone (MMC 19.403)

- **Substantive code amendments** – an example includes a review/overhaul of Title 17 – Land Division.
- **Housekeeping** – these are amendments that are clarifications or minor tweaks that are not intended to affect meaning or intent of existing regulations. Housekeeping amendments are a way of cleaning up the code.

[November 14, 2023](#): The Planning Commission held a work session and reviewed the proposed amendments (see Attachment 1).

ANALYSIS

The current package of proposed **substantive** code amendments involves a comprehensive review and overhaul of Title 17 – Land Division. The city has made small amendments to Title 17 but has not done a comprehensive review in many years. The proposed amendments affect nearly every section of Title 17, with the following objectives:

- Ensure that the code accurately reflects current state law;
- Include clear and objective standards;
- Remove redundant or confusing language;
- Clarify and simplify review processes to the benefit of both the applicant and staff; and
- Address recent legislation involving middle housing.

Because so much of the existing code language is affected, staff has elected to use a “repeal and replace” format for the amendments rather than the typical underline/strikeout method.

This overhaul includes amendments that fall into the following basic categories of amendments (please refer to Attachments 1 and 2 for existing and proposed language):

1. Formatting/redundant language

- **Revise and reorganize** this entire code section to eliminate needless “tables of contents”, section numbers for each term in various sections, and eliminate redundancies that can cause confusion when repeated in multiple sections. For example, the current code has a new subsection number for each term in the definitions; this is not necessary.
- **Reduce** the number of lists of specific items to be included on plans. These items are better identified on the required checklists rather than in the code because if anything is required to be added or revised, the checklist is more easily amended than the code. One particular exception to this is the requirements for middle housing land divisions because the required items are specifically identified in state law.
- **Reorganize** the language to provide a separate section just for middle housing and expedited land divisions (17.26). These types of land division have very specific requirements that are established in state law and are different from traditional

land division proposals. Applicants and staff are better served by having this language stand on its own in a complete section rather than be inserted throughout the text for standard land division proposals.

2. Review process and application requirements

- **Rewrite** the section for each type of land division to include a description of the application process (17.12). The current code includes a chart that can be confusing about which land use review type applies and allows for a reduction in review type as applicable. By clearly identifying the land use review process for each land division type, staff proposes to remove any uncertainty or discretion in how the code applies.
 - This rewrite includes removing Type III review for subdivisions and making it a Type II review. Regardless of the number of lots proposed, the standards for land division are clear and objective, making Type III review unnecessary.
- **Revise** language to clearly identify filing deadlines and that permits will not be accepted or issued until a final plat is recorded.
- **Revise** the language related to extensions of expiring approvals to align the process with the existing extensions process identified in 19.908.

3. New language

- **Add** a new section for tracts and easements (17.24), which specifies requirements and management responsibilities when included in a land division proposal. These terms are defined in the existing code, but ownership and maintenance are not specified. This new language provides both staff and applicants with clear language for how they are to be handled in the future, minimizing conflict when the development is complete and homeowners or tenants change.
- **Add** a new section for remainder or left over land resulting from a partition (17.28.090). Staff has responded to several inquiries from the owners of larger properties where they would like to partition off the house and sell the remaining land to a developer. This new language includes requirements for such a partition which anticipates future development but restricts any permit review until minimum density is achieved. This helps to eliminate any future confusion about the ability to build only one large home on a large property.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):

- MMC Section 19.902 Amendments to Maps and Ordinances
- MMC Section 19.1008 Type V Review

This application is subject to Type V review, which requires the Planning Commission to hold an initial evidentiary hearing to and then forward a recommendation to the City Council for a final decision. Type V applications are legislative in nature and involve the creation, revision, or large-scale implementation of public policy.

The Commission has 4 decision-making options as follows:

- A. Recommend that Council approve the proposed amendments as per to the recommended Findings in Support of Approval.
- B. Recommend that Council approve the proposed amendments with revisions, including modifications to the recommended Findings in Support of Approval. Such modifications need to be read into the record.
- C. Recommend that Council deny the proposed amendments.
- D. Continue the hearing.

There is no deadline for a final decision on Type V applications, as they are legislative in nature.

COMMENTS

Notice was provided as described in MMC 19.1008, with a 30-day notice and code commentary made available online on February 21, 2024. The required 35-day notice to Metro and the Department of Land and Conservation Development was posted on February 20, 2024. Notice was also posted at City Hall and the Ledding Library.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	Public Copies	EPacket
1. Ordinance	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
a. Recommended Findings in Support of Approval	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Draft code amendment language (underline/strikeout)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Draft code amendment language (clean)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = materials provided to Planning Commission 7 days prior to the meeting.

E-Packet = packet materials posted online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-117>, available 7 days prior to the meeting.



COUNCIL ORDINANCE No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE TITLE 17 LAND DIVISION, AND TITLE 19 ZONING, TO MAKE CHANGES TO SELECT SECTIONS FOR THE PURPOSE OF CLARIFICATION AND IMPROVED EFFECTIVENESS (FILE #ZA-2023-006).

WHEREAS, the proposed amendments to Milwaukie Municipal Code (MMC) Titles 17, and 19 to make changes and clarifications that will more effectively communicate and implement existing policy; and

WHEREAS, legal and public notices have been provided as required by law, and opportunities for public review and input has been provided; and

WHEREAS, on April 9, 2024, the Planning Commission conducted a public hearing as required by MMC 19.1008.5 and adopted a motion in support of the amendments; and

WHEREAS, the City Council finds that the proposed amendments are in the public interest of the City of Milwaukie.

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. Findings. Findings of fact in support of the amendments are adopted by the City Council and are attached as Exhibit A.

Section 2. Amendments. The Milwaukie Municipal Code (MMC) is amended as described in Exhibit B (underline/strikeout version), and Exhibit C (clean version).

Section 3. Effective Date. The amendments shall become effective 30 days from the date of adoption.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

**Recommended Findings in Support of Approval
File #ZA-2023-006, Title 17 (Land Division) Code Amendments**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, the City of Milwaukie, proposes to amend regulations that are contained in Title 17 Land Division and Title 19 Zoning Ordinance of the Milwaukie Municipal Code (MMC). The land use application file number is ZA-2023-006.
2. The purpose of the proposed code amendments is to: ensure that the code accurately reflects current state law; include clear and objective standards; remove redundant or confusing language; clarify and simplify review processes to the benefit of both the applicant and staff; and address recent legislation involving middle housing.
3. The proposed amendments are clarifications and streamline processes that are not intended to significantly affect the meaning or intent of existing regulations; they are not intended to be a change in policy. The amendments are located in several titles of the municipal code:
 - Municipal Code –
 - MMC 17 – Land Division – entire Title
 - Zoning Ordinance –
 - MMC 19.901 – Land Use Applications
 - MMC 19.908 – Extensions to Expiring Approvals
 - MMC 19.1001 – Expiration of Approved Decisions
4. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.902 Amendments to Maps and Ordinances
 - MMC 19.1000 Review Procedures
5. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. Public hearings were held on April 9, 2024 and April 16, 2024 as required by law.
6. MMC 19.902 Amendments to Maps and Ordinances
 - a. MMC 19.902.5 establishes requirements for amendments to the text of the zoning ordinance. The City Council finds that these requirements have been met as follows.
 - (1) MMC Subsection 19.902.5.A requires that changes to the text of the land use regulations of the Milwaukie Municipal Code shall be evaluated through a Type V review per Section 19.1008.

The Planning Commission held a duly advertised public hearing on April 9, 2024. A public hearing before City Council was held on April 16, 2024. Public notice was provided in accordance with MMC Subsection 19.1008.3.

(2) MMC Subsection 19.902.5.B establishes the approval criteria for changes to land use regulations of the Milwaukie Municipal Code.

(a) MMC Subsection 19.905.B.1 requires that the proposed amendment be consistent with other provisions of the Milwaukie Municipal Code.

The proposed amendments have been coordinated with and are consistent with other provisions of the Milwaukie Municipal Code. The amendments are clarifying in nature and are not intended to affect policy.

(b) MMC Subsection 19.902.5.B.2 requires that the proposed amendment be consistent with the goals and policies of the Comprehensive Plan.

Only the goals, objectives, and policies of Comprehensive Plan that are listed below are found to be relevant to the proposed text amendment.

(i) Goal 7.1 for Housing (Equity) states:

Enable and encourage housing options that meet the needs of all residents, with a specific focus on uplifting historically disenfranchised communities and eliminating disparities for populations with special needs or lower incomes. To continue to encourage an adequate and diverse range of housing types and the optimum utilization of housing resources to meet the housing needs of all segments of the population.

Policy 7.1.2 states:

Establish development standards that regulate size, shape, and form and are not exclusively focused on regulating density.

Goal 8.3 for Urban Design and Land Use states:

Provide a clear and straightforward design review process for development in Milwaukie along with incentives to achieve desired outcomes.

The intent of the proposed amendments is to clarify and streamline processes for middle housing land divisions to ensure that the code is clear and objective in the review process. Further, by revising the review process for subdivisions from Type III to Type II review, discretionary review and a lengthy review process are minimized for residential development.

(c) MMC Subsection 19.902.5.B.3 requires that the proposed amendment be consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies.

- (d) MMC Subsection 19.902.5.B.4 requires that the proposed amendment be consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD did not identify any inconsistencies with relevant State statutes or administrative rules.

The proposed amendments are found to be consistent with the Transportation Planning Rule for the following reason. The proposed text amendment does not impact the transportation system given that the amendments are clarifying in nature and do not create the opportunity for any more vehicle trips than are currently allowed by other similar uses in each respective zone.

- (e) MMC Subsection 19.902.5.B.5 requires that the proposed amendment be consistent with relevant federal regulations.

Relevant federal regulations are those that address land use, the environment, or development in the context of local government planning. Typically, regulations such as those set forth under the following acts may be relevant to a local government land use process: the Americans with Disabilities Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Fair Housing Act, the National Environmental Policy Act, the Religious Land Use and Institutionalized Persons Act, and the Resource Conservation and Recovery Act. None of these acts include regulations that impact the subject proposal or that cannot be met through normal permitting procedures. Therefore, the proposal is found to be consistent with federal regulations that are relevant to local government planning.

7. MMC 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows.
- a. MMC 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.
The amendments were initiated by the Planning Manager on February 1, 2024.
 - b. MMC Section 19.1008 establishes requirements for Type V review. The procedures for Type V review have been met as follows:
 - (1) Subsection 19.1008.3.A.1 requires opportunity for public comment.
Opportunity for public comment and review has been provided. The Planning Commission had a work session about the proposed amendments on November 14, 2023. The City Council had a work session on the proposed amendments on February 20, 2024.
The current version of the draft amendments with a code commentary has been posted on the City's website since February 20, 2024.

- (2) Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public at least 30 days prior to the hearing.

A notice of the Planning Commission's April 9, 2024, hearing was posted as required on February 21, 2024. A notice of the City Council's April 16, 2024 public hearing was posted as required on March 14, 2024.

- (3) Subsection 19.1008.3.A.3 requires notice be sent to individual property owners if the proposal affects a discrete geographic area or specific properties in the City.

The Planning Manager has determined that the proposal affects a large geographic area. Notice to individual property owners and individual properties was not required.

- (4) Subsection 19.1008.3.B requires notice of a Type V application be sent to the Department of Land Conservation and Development (DLCD) 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to DLCD on February 20, 2024.

- (5) Subsection 19.1008.3.C requires notice of a Type V application be sent to Metro 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to Metro on February 20, 2024.

- (6) Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the proposed amendments would affect the permissible uses of land for those property owners.

The proposed amendments generally do not further restrict the use of property. In general, the proposed amendments provide clarification.

- (7) Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application.

The Planning Commission held a duly advertised public hearing on April 9, 2024 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on April 16, 2024 and approved the amendments.

Underline/Strikeout Amendments

TITLE 17

LAND DIVISION

Chapters:

17.04 Administration and Enforcement

17.08 Definitions

17.12 Application Procedure

17.16 Application Requirements

17.18 Approval Criteria

17.20 Preliminary Plat

17.22 Final Plat

17.24 Tracts and Easements

17.26 Middle Housing and Expedited Land Divisions

17.28 Design Standards

17.32 Improvements

17.44 Exceptions and Variances

CHAPTER 17.04**ADMINISTRATION AND ENFORCEMENT****17.04.010 TITLE AND STRUCTURE****A. Title**

The ordinance codified in this title shall be known and may be cited as the “Land Division Ordinance” of the City of Milwaukie.

B. Structure

This title is divided into chapters and sections. Chapter divisions are denoted by the 2-digit number following the title number. Section divisions are identified by the 3-digit number following the chapter division.

17.04.020 AUTHORITY

A. The Planning Manager has the authority to apply, interpret, and enforce the provisions of this title. An appeal from a ruling by the Planning Manager regarding a requirement of this title may be made to the Planning Commission under provisions of Chapter 19.1000.

B. The City Engineer has the authority to accept, conditionally accept, or reject construction and engineering plans and specifications in accordance with professional judgment and accepted engineering or surveying practices.

17.04.030 CONSISTENCY WITH MUNICIPAL CODE

All land divisions and property boundary changes must be consistent with Title 16 Environment, this title, Title 18 Flood Hazard Regulations, and Title 19 Zoning.

17.04.040 APPROVAL REQUIRED

All lot consolidations, land divisions, changes in property boundary lines, and creation of streets or rights-of-way must be approved in accordance with these regulations prior to conveying or recording any instrument effecting a lot consolidation, land division, or property boundary change. A person desiring to partition, subdivide, replat, consolidate, or change property boundaries must submit application for approval as provided in this title and State law.

17.04.050 TIME LIMIT ON APPROVAL**A. Expiration of Approval**

Expiration of approvals are provided in Subsection 19.1001.7.E.

B. Extensions

Extension of approvals are provided in Subsection 19.908. An extension to an expiring land division approval must be approved when the provisions of Subsection 19.908 are met and provided that:

1. No changes are made on the original plan as approved;
2. The applicant can show intent of recording the land division or boundary change within the extension period; and
3. There have been no changes in the ordinance provisions on which the approval was based.

17.04.060 REDUCTION OF LAND BELOW MINIMUM STANDARDS

No unit of land shall be split or reduced by any means in conflict with the requirements of this title or Title 19 of this code. The splitting of a lot or parcel to add to another will not be allowed unless the remaining portion meets all zoning standards for the zone where the land is located, or it is simultaneously consolidated with a contiguous parcel, which will thereafter comply with zoning standards.

17.04.070 CORRECTION OF IMPROPER LAND DIVISION OR BOUNDARY CHANGE

Improper land divisions or boundary changes must be corrected by submission of appropriate applications and by following the associated review procedures prescribed in this title. This section does not preclude enforcement against violations of this title.

17.04.080 FORM OF APPLICATIONS

All applications provided for in this title must be made on forms prescribed by the Planning Manager.

17.04.090 FEES

A fee as established by resolution of the City Council must be paid to the City upon the filing of an application. Such fees will not be refundable.

17.04.100 AMENDMENTS

Legislative amendments to this title must be made in accordance with Chapter 19.1000 and Section 19.902.

17.04.110 DETERMINATIONS OF LEGAL STATUS

Requests for determinations on the legal status of units of land must be processed pursuant to Section 19.903 Code Interpretations and Director Determinations.

17.04.120 RECORDING

A. Recording instruments for boundary change, subdivision, partition, and replat must be submitted to the Clackamas County Surveyor.

B. Prior to recording a lot consolidation, property line adjustment, partition plat, or subdivision plat, the applicant must submit the recording instruments to the Planning Manager for a determination of consistency with the City Code and required approvals.

C. Lot consolidations for units of land legally created by metes and bounds descriptions may be recorded by deed subject to approval of the County Surveyor.

D. Subdivision and partition plats and replats, must be recorded by plat.

E. The applicant must submit the copy of the recorded lot consolidation, property line adjustment, partition plat, or subdivision plat survey map to the City prior to the issuance of any development permits on the new or re-configured lots.

17.04.130 MONUMENTATION AND SURVEY

A. Monuments are required in accordance with ORS Chapter 92.

B. Monumentation surveys must be filed with the County Surveyor in accordance with ORS Chapters 92 and 209.

17.04.140 VIOLATION—PENALTIES

Violation of any provision of this title is a civil infraction. The civil penalty for violation of this title is identified in the city fee schedule. The cost of completing or correcting any improvements required by this title and incurred by the City may be assessed to persons as part of the civil infraction judgment. Each day a violation continues must be considered a separate violation.

17.04.150 APPEALS

Appeals on actions authorized under this title must be made in accordance with Chapter 19.1000.

(Ord. 2025 § 3, 2011; Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.08

DEFINITIONS

The words and phrases used in this title have the meanings provided in this chapter.

“Access control strip” means a strip of land reserved between the end or side of a street, or of land between a dedicated street of less than full width and an abutting parcel of land, held for access control, future street extension, or widening.

“Applicant” means the person who has filed application for land use action, land division, boundary adjustment or other action requiring a response from the City.

“Approval authority” means the individual or governmental body authorized by this code to take action on applications for actions specified in this title.

“Bicycle way” means a right-of-way for bicyclists.

“Block” means a group of lots, tracts, or parcels which have been subdivided and are entirely surrounded by highways or streets or in part by a well-defined and fixed boundary.

“Boundary change” means the relocation of a property line established by dedication, deed, property line adjustment, lot consolidation, partition, subdivision, and/or replat.

“Buffer strip” means a strip of land of sufficient width to serve as a buffer between dissimilar use districts, existing in a natural or landscaped condition, and located along the edge of a subdivision.

“Building line” means a line on a plat or otherwise described indicating the limit beyond which buildings or structures may not be erected.

“City” means the City of Milwaukie, Oregon.

“Comprehensive Plan” means the plan adopted by the City Council for the guidance of growth and improvement of the City, including modifications or refinements, which may be made from time to time.

“Easement” means the right to use land in a limited way for a stated purpose.

“Expedited land division” means a partition or subdivision of a lot or parcel on which the development of housing is allowed as defined by ORS 197.360(1).

“Land division” means the division of land by partition, subdivision, or replat.

“Lot” means a legally defined unit of land other than a parcel or tract that is a result of a subdivision of land. For general purposes of this title, lot also means legal lots or lots of record under the lawful control, and in the lawful possession, of one distinct ownership. When one owner controls an area defined by multiple adjacent legal lots or lots of record, the owner may define a lot boundary coterminous with one or more legal lots or lots of record within the distinct ownership. Figure 19.201-1 illustrates some of the lot types defined below.

“Back lot” means a lot that does not have frontage on a public street, typically accessed via an easement over another property.

“Flag lot” means a lot that has a narrow frontage on a public street with access provided via a narrow accessway or “pole” to the main part of the lot used for building, which is located behind another lot that has street frontage. There are two distinct parts to the flag lot: the development area or “flag” which comprises the actual building site, and the access strip or “pole” which provides access from the street to the flag.

“Legal lot” means a unit of land other than a parcel or tract created through a subdivision or partition approved by the City.

“Lot of record” means a unit of land for which a deed or other instrument dividing the land was filed with the Clackamas County Recorder, which was not created through a partition or subdivision approved by the City, and which was created prior to October 5, 1973.

“Lot consolidation” means the elimination of a common property line between two or more units of land to form one unit of land.

“Middle housing land division” means a partition or subdivision of a lot or parcel on which the development of middle housing is allowed under ORS 197.758(2) or (3).

“Monument” means a fixed, permanent, and visible landmark indicating boundaries.

“Owner” means the owner of record of real property as shown on the latest tax rolls of Clackamas County, or by the deed records of said County, or a person who is purchasing a parcel of property under contract.

“Parcel” means a single unit of land that is created by a partitioning of land.

“Partition” means either the act of partitioning land or an area of land partitioned.

“Partitioning” means to divide an area of land into two or three parcels within a calendar year but does not include the following:

A. A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property, or the creation of cemetery lots;

B. An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with applicable zoning;

C. The division of land resulting from the recording of a subdivision or condominium plat;

D. A sale or grant by a person to a public agency or public body for state highway, county road, City street or other right-of-way purposes provided that such road or right-of-way complies with the comprehensive plan and ORS 215.213 (2)(p) to (r) and 215.283 (2)(q) to (s). However, any property divided by the sale or grant of property for State highway, County road, City street or other right-of-way purposes must continue to be considered a single unit of land until such time as the property is further subdivided or partitioned; or

E. A sale or grant by a public agency or public body of excess property resulting from the acquisition of land by the State, a political subdivision or special district for highways, County roads, City streets or other right-of-way purposes when the sale or grant is part of a property line adjustment incorporating the excess right-of-way into adjacent property. The property line adjustment must be approved or disapproved by the applicable local government. If the property line adjustment is approved, it must be recorded in the deed records of the County where the property is located.

“Pedestrian way” means a right-of-way for pedestrians that is improved or unimproved.

“Person” means an individual, firm, partnership, corporation, company, association, syndicate, or any legal entity, and including any trustee, receiver, assignee, or other similar representative thereof.

“Plat” means and includes a map and other writing containing all the descriptions, locations, dedications, specifications, provisions, and information concerning a partition or subdivision.

“Property line adjustment” means the relocation of a common property line between two abutting units of land that does not result in the creation of a new unit of land.

“Replat” means the act of platting the lots, parcels, and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat, including an increase or decrease in the number of lots.

“Right-of-way” means the area between boundary lines of a public way.

“Sidewalk” means a pedestrian walkway with permanent surfacing to City standards.

“Street” means the width between the boundary lines of every way that provides for public use for the purpose of vehicular and pedestrian traffic and the placement of utilities. “Street” includes the terms “road,” “highway,” “lane,” “place,” “avenue,” “boulevard,” or other similar designations.

A. “Access street” means a street intended only for access to abutting properties.

B. “Alley” means a narrow street used for access to the back or side of properties otherwise abutting on another street.

C. “Major arterial street” means a street that carries both local and through traffic to destinations outside the local community. The major arterial provides access to other communities as well as access through Milwaukie. Public transit to other communities generally use a major arterial.

D. “Minor arterial street” means a street that carries local traffic between neighborhood areas or to regional facilities. The minor arterial provides access from neighborhood collector streets to community services and to alley and an abutting parcel of land, or a strip other neighborhoods within, or immediately adjacent to the City. Local public transit may use minor arterial streets.

E. “Collector street” means a street that serves internal traffic within areas having a single land use pattern. The collector streets carry local traffic within a neighborhood area. They carry traffic from the local streets to the minor and/or major arterial network or to schools, local shopping centers, or other local streets within the neighborhood.

F. “Cul-de-sac” means a short access street terminated by a vehicle turnaround.

G. “Dead-end street” means a street terminating at a property line, but which may be extended.

H. “Frontage street” means an access street parallel and adjacent to a major arterial street providing access to abutting properties, but protected from through traffic.

I. “Local street” means a street that provides direct access to abutting property.

“Subdivide land” means to divide an area or tract of land into four or more lots within a calendar year.

“Subdivision” means either an act of subdividing land or a unit of land subdivided as defined in this title.

“Tract” means a unit of land other than a lot or parcel. A tract is a piece of land created and designated as part of a land division that is not a lot, adjusted lot, lot remnant, lot of record, or a public right-of-way. Tracts are created and designed for a specific purpose. Land uses within a tract are restricted to those uses consistent with the stated purpose as described on the plat, or in the maintenance agreements, or through Conditions, Covenants and Restrictions (CC&Rs). Examples include stormwater management tracts, private street or alley tracts, tree preservation tracts, environmental resource tracts, and open space tracts.

“Unit of land” means a legally created lot, parcel, or other unit of real property legally created by metes and bounds description or other legal means that is recorded on the County land records as defined in ORS 92.010.

(Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.12

APPLICATION PROCEDURE

17.12.010 PURPOSE

The purpose of this chapter is to specify the process and procedures for lot consolidation, property line adjustment, partition, and subdivision..

17.12.020 APPLICATION PROCEDURE

A. Applications for land division and property boundary changes will be processed in accordance with Chapter 19.1000 Type I and Type II procedures as indicated in this section.

B. An increase in the number of lots within the original boundaries of a partition plat must be reviewed as a subdivision when the number of existing lots that are to be modified combined with the number of proposed new lots exceeds 3.

C. A modification to a plat (i.e., a replat) that relocates or eliminates all or a portion of a common property line between abutting properties, including underlying lot lines, that does not create an additional lot or parcel will be processed as a property line adjustment or lot consolidation. This process requires a deed to be recorded that stipulates the lot to be a single lot for development and legal purposes.

D. A replat that results in the creation of a new parcel(s) or lot(s) will be processed as a partition or subdivision, depending on the number of resulting lots and according to the definitions provided in Chapter 17.04.

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Table 17.12.020 Boundary Change Summary		
<u>Boundary Change Action</u>	<u>Application Type/Land Use Action</u>	<u>Review Type</u>
<u>Consolidating legal lots created by deed.</u>	<u>Lot consolidation</u>	I
<u>Any boundary adjustment that is consistent with the ORS and this title but does not result in a change in the number of lots.</u>	<u>Property Line Adjustment</u>	I
<u>Any boundary adjustment that is affected by a plat restriction.</u>	<u>Property Line Adjustment</u>	II
<u>A land division, modification, or adjustment that results in up to 3 lots.</u>	<u>Partition</u>	II
<u>Any division, modification, or adjustment that results in 4 or more lots.</u>	<u>Subdivision</u>	II
<u>Any land division as defined by ORS 197.360 Expedited Land Division and/or land division of a middle housing project per ORS 197.758.</u>	<u>Expedited Land Division</u> <u>Middle Housing Land Division</u>	II

17.12.030 Lot Consolidation, Property Line Adjustment

A. Approval process. A lot consolidation or property line adjustment application is processed through a Type I procedure, as provided in Section 19.1004 and the application requirements in Chapter 17.16.

B. Approval criteria. The approval authority may approve, approve with conditions, or deny a lot consolidation or property line adjustment based on the approval criteria in Section 17.18.010.

C. Recording requirements. Upon approval of the proposed lot consolidation or property line adjustment, the applicant must record or file the signed lot consolidation or property line adjustment with Clackamas County and submit a copy of the recorded instrument to the City, to be incorporated into the record. References to required recorded deeds must be included on the record of survey.

D. Time limit. The applicant must submit the copy of the recorded lot consolidation or property line adjustment survey map to the City prior to the issuance of any development permits on the reconfigured lots.

17.12.040 Partition

A. Conformance with state statute. All land partition proposals must comply with all state regulations as provided in ORS Chapter 92, Subdivision and Partitions.

B. Prohibition on sale of lots. Sale of lots created through the land partitioning process is prohibited until the final partition plat is recorded.

C. Approval through two-step process. A partition application requires a two-step process: the preliminary plat and the final plat.

1. Preliminary plat. A preliminary plat application is processed through a Type II procedure, as provided in Section 19.1005 and the application requirements in Chapters 17.16 and 17.20.

2. Final plat. The preliminary plat must be approved before the final plat can be submitted for approval. The final plat must satisfy all conditions of approval imposed as part of the preliminary plat approval pursuant to Chapter 17.20.

3. Full compliance with all requirements for subdivision may be required if the Planning Manager should determine that the entire parcel being partitioned is in the process of being divided for the purpose of subdivision. This provision applies if the land to be partitioned exceeds 2 acres and within a year is being partitioned into more than two parcels, any one of which is less than 1 acre.

D. Approval criteria. The approval authority may approve, approve with conditions, or deny a partition based on the approval criteria in Sections 17.18.020 and 17.18.030.

17.12.050 Subdivision

A. Conformance with state statute. All subdivision proposals must comply with all state regulations as provided in ORS Chapter 92, Subdivision and Partitions.

B. Prohibition on sale of lots. Sale of lots created through the subdivision process is prohibited until the final plat is recorded.

C. Approval through two-step process. A subdivision application requires a two-step process: the preliminary plat and the final plat.

1. Preliminary plat. A preliminary plat application is processed through a Type II procedure, as provided in Section 19.1005. An application for a preliminary plat may be reviewed concurrently with an application for a planned development, as provided in Chapter 19.311, Planned Developments.

2. Final plat. The preliminary plat must be approved before the final plat can be submitted for approval. The final plat must satisfy all conditions of approval imposed as part of the preliminary plat approval pursuant to Chapter 17.20.

D. Approval criteria. The approval authority may approve, approve with conditions, or deny a subdivision based on the approval criteria in Sections 17.18.020 and 17.18.030.

(Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.16

APPLICATION REQUIREMENTS AND PROCEDURES

17.16.010 APPLICATION REQUIRED

Application submissions for lot consolidation, property line adjustment, partition, subdivision, and replat must be made in accordance with provisions of this chapter.

17.16.020 DETERMINATION OF COMPLETENESS

Consistency with Submission Requirements

Applications must be reviewed for completeness and consistency with submission requirements of this chapter. Application submissions that do not meet the requirements of this chapter must be deemed incomplete for the purpose of ORS 227.178 and Chapter 19.1000. The City must provide to the applicant notice of whether an application is complete or incomplete in accordance with ORS 227.178 and Subsection 19.1003.3.

17.16.030 WAIVER OF SUBMISSION REQUIREMENTS

A. Certain application submission requirements may be waived at the discretion of the Planning Manager subject to meeting the following conditions:

1. The applicant shows good cause for the requested waiver;

2. The waiver does not compromise a proper and complete review; and

3. The information is not material to describing the proposal or demonstrating compliance with approval criteria.

B. Application submission requirements that may not be waived include:

1. Signed and completed application form, submission requirements form, and plan checklist;

2. Property owner's authorization for application to be made;

3. Detailed narrative description that specifies how the proposal complies with applicable codes; and

4. Required plans, maps, and drawings.

C. Application fees may only be waived by action of the City Council. (Ord. 1907 (Attach. 1), 2002)

17.16.040 LOT CONSOLIDATION AND PROPERTY LINE ADJUSTMENT

The following must accompany applications for lot consolidation and property line adjustments:

A. Completed application forms signed by all owners of property included in the proposal;

B. Application fee as adopted by the City Council;

C. Narrative report that describes how the proposal meets applicable approval criteria;

D. Additional information as may be required by the application check list; and

E. A surveyed and monumented plan prepared in accordance with ORS 92.060 (7) drawn to scale showing the following details:

1. Scale, north arrow, and date of map;

2. Tax map and lot number identifying each property involved in the application;

3. Adjacent rights-of-way, with width shown;

4. Location, width, and purpose of any recorded easements and/or plat restrictions;

5. Proposed property lines and dimensions of the affected lots;

6. The area of each lot;

- 7. Location of existing structures to remain and proposed structures, if any, with setbacks shown to all existing and proposed lot lines; and
- 8. Deeds of the properties involved.
- 9. Signature block for City signature and approval.

17.16.050 PRELIMINARY PLAT FOR PARTITION AND SUBDIVISION

The following must accompany applications for partition:

- A. Completed application form signed by all owners of property included in the proposal;
- B. Application fee as adopted by the City Council;
- C. Completed and signed submission requirements form and partition checklist or subdivision checklist forms as appropriate;
- D. All information specified on the submission requirements and partition checklist or subdivision checklist forms as appropriate;
- E. Requirements and information specified in Chapter 17.20; and
- F. Any additional information as may be needed to demonstrate compliance with applicable approval criteria. (Ord. 1907 (Attach. 1), 2002)

17.16.060 FINAL PLAT FOR PARTITION AND SUBDIVISION

The following must accompany applications for partition:

- A. A completed application form signed by all owners of property included in the proposal;
- B. The application fee as adopted by the City Council;
- C. Completed and signed submission requirements and final plat checklist forms;
- D. All information specified on the submission requirements and final plat checklist;
- E. A survey prepared by registered land surveyor showing setbacks to existing structures with sufficient detail to demonstrate compliance with yard requirements;
- F. Requirements and information specified in Chapter 17.22; and

G. Any additional information as may be needed to demonstrate compliance with applicable approval criteria.

(Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.18

APPROVAL CRITERIA

17.18.010 APPROVAL CRITERIA FOR LOT CONSOLIDATION AND PROPERTY LINE ADJUSTMENT

A. Approval Criteria

The approval authority may approve, approve with conditions, or deny a lot consolidation or property line adjustment based on the following approval criteria. The applicant for a lot consolidation or property line adjustment must demonstrate the following:

1. Compliance with this title and Title 19 of this code.
2. The boundary change will allow reasonable development of the affected lots and will not create the need for a variance of any land division or zoning standard.
3. Boundary changes must not reduce residential density below minimum density requirements of the zoning district in which the property is located.

17.18.020 APPROVAL CRITERIA FOR PRELIMINARY PLAT

A. Approval Criteria

The approval authority may approve, approve with conditions, or deny a preliminary plat based on the following approval criteria:

1. The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards.
2. The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.
3. The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

4. The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

5. A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

17.18.030 APPROVAL CRITERIA FOR FINAL PLAT

Following the Type I procedure, the Planning Manager and the City Engineer must review the final plat and must approve or deny the final plat based on findings of compliance with the following:

A. The final plat complies with the preliminary plat approved by the approval authority and all conditions of approval have been satisfied.

B. The preliminary plat has not lapsed.

C. The streets and roads for public use are dedicated without reservation or restriction other than revisionary rights upon vacation of any such street or road and easements for public utilities.

D. The plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal, and water supply systems.

E. All common improvements required as conditions of approval have been described and referenced on the plat, and where appropriate, instruments to be recorded have been submitted.

F. The plat complies with the Zoning Ordinance and other applicable ordinances and regulations.

G. Submission of signed deeds when access control strips are shown on the plat.

H. The plat contains an affidavit by the land surveyor who surveyed that the land represented on the plat was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92.060, and indicating the initial point of the survey, and giving the dimensions and kind of such monument, and its reference to some corner established by the U.S. Survey or giving 2 or more objects for identifying its location.

(Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.20

PRELIMINARY PLAT**17.20.010 SUBMISSION OF PLANS**

Applicants for partition and subdivision must prepare a preliminary plat and such improvement plans and other supplemental material including as may be required to describe and represent the objectives of the proposal.

17.20.020 SCALE

The preliminary plat must be drawn at a scale and on a sheet size that reliably and conveniently represents design details sufficient for the proper plan review and determination of compliance with this title.

17.20.030 GENERAL INFORMATION TO BE SHOWN ON THE PRELIMINARY PLAT

A. Preliminary plats must be prepared by an Oregon registered professional land surveyor in compliance with ORS 92.060.

B. Preliminary plats must include all information as identified on the application forms and preliminary plat checklist prescribed by the Planning Manager.

C. Vicinity map must be drawn at an appropriate scale, showing all existing subdivisions, streets, and unsubdivided land between the proposed subdivision and the nearest existing arterial or collector streets, and showing how proposed streets may be extended to connect with existing streets. At a minimum, the vicinity map must depict future street connections for land within 400 feet of the subject property.

17.20.040 BUILDING LINES PROHIBITED

Platted building lines are prohibited. The effect of building lines may be executed through recordation of instruments, which must be referenced on the recorded plat.

17.20.050 EXISTING CONDITIONS

The following must be shown on the preliminary plat:

A. Location, width, and names of all existing or platted streets within or adjacent to the tract, together with easements, railroad right-of-way, and other important features, such as section lines and corners, City boundary lines, and monuments.

B. Contour lines related to an established benchmark or other datum approved by the Engineering Director, with intervals at a minimum of 2 ft for slopes up to 10% and 5 ft for slopes over 10%.

C. Location within the area to be divided, and in the adjoining streets and property, of existing sewers, water mains, culverts, storm drain system, and electric conduits or lines proposed to service the property to be subdivided, and invert elevations of sewer manholes, drain pipes, and culverts.

D. Zoning and existing uses within the tract and 200 ft on all sides, including the location and use of all existing structures indicating those that will remain and those to be removed.

E. Approximate location of areas subject to inundation or stormwater overflow with approximate high-water elevation. Location, width, direction, and flow of all watercourses on or abutting the tract including wetlands and watercourses as shown on City-adopted natural resource and Title 3 maps.

F. Natural features such as rock outcroppings, drainages whether seasonal or perennial, wooded areas, and trees, including type and caliper, per the requirements for a tree inventory identified in MMC 16.32.042.

G. Floodway and floodplain boundary.

H. Areas containing slopes of 25% or greater.

17.20.060 PROPOSED CONDITIONS

A. The plat must include the following information:

1. Date, north point, scale, address, assessor reference number, and legal description;

2. Name and address of the record owner or owners and of the person who prepared the site plan;

3. Approximate acreage and square feet under a single ownership, or if more than one ownership is involved, the total contiguous acreage of all landowners directly involved in the partition;

4. For land adjacent to and within the area to be divided, the locations, names, and existing widths of all streets, driveways, public safety accesses, easements, and rights-of-way; location, width, and purpose of all other existing easements; and location and size of sewer and waterlines, drainage ways, power poles, and other utilities;

5. Location of existing structures, identifying those to remain in place and those to be removed;

6. Lot design and layout, showing proposed setbacks, landscaping, buffers, driveways, lot sizes, and relationship to existing or proposed streets and utility easements; and tree preservation and planting information per the requirements in MMC 16.32.042.

7. Existing development and natural features for the site and adjacent properties, including those properties within 100 ft of the proposal, showing buildings, mature trees, topography, and other structures;

8. Elevation and location of flood hazard boundaries;

9. The location, width, name, and approximate centerline grade and curve radii of all streets; the relationship of all streets to any projected streets planned by the City; whether roads will continue beyond the plat; and existing and proposed grade profiles. No street name may be used which will duplicate or be confused with the name of an existing street, except for extensions of existing streets. Street names and numbers must conform to the established pattern in the surrounding area.

10. Improvements to be made by the developer and the approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements must be submitted so that they may be checked for compliance with the objectives of this title, State law, and other applicable City ordinances. If the nature of the improvements is such that it is impractical to prepare all necessary details prior to approval of the preliminary plat, the additional details must be submitted with the request for final plat approval. (Ord. 2003 § 2, 2009; Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.22

FINAL PLAT

17.22.010 REQUIRED PLAT INFORMATION

In addition to that otherwise specified by law, the following information must be shown on the final plat:

A. The date, scale, north point, legend, plat boundary, and controlling topography such as creeks and highways;

B. Legal description of the tract boundaries;

C. Name of the owner(s), applicant(s), and surveyor.

D. Reference points of existing surveys identified, related to the plat by distances and bearings, and referenced to a field book or map as follows:

1. Stakes, monuments, or other evidence found on the ground and used to determine the boundaries of the subdivision;

2. Adjoining corners of adjoining subdivisions;

3. Other monuments found or established in making the survey of the subdivision or required to be installed by provision of this title.

E. The exact location and width of streets and easements intersecting the boundary of the tract.

F. Lines with dimensions, bearings or deflection angles, radii, arcs, points of curvature, and tangent bearings for tract, lot, and block boundaries, and street right-of-way and centerlines. Tract boundaries and street bearings must be shown to the nearest second with basis of bearings approved in advance by the County Surveyor. All distances must be shown to the nearest hundredth of a foot. No ditto marks may be used.

G. The width of the portion of streets being dedicated, the width of any existing right-of-way, and the width of each side of the centerline. For streets on curvature, curve data must be based on the street centerline and, in addition to the centerline dimensions, the radius and central angle must be indicated.

H. Easements denoted by fine dotted lines, clearly identified and, if already of record, their recorded reference. If an easement is not definitely located of record, a statement of the easement. The width of the easement, its length and bearing, and sufficient ties to locate the easement with respect to the subdivision must be shown. If the easement is being dedicated by the map, it must be properly referenced in the owner's certificates of dedication.

I. Lot numbers beginning with the number "1" and numbered consecutively.

J. Land tracts to be dedicated or reserved for any purpose, public or private, as distinguished from residential lots intended for sale.

K. References to any agreements including conditions of approval or special building restrictions that will be recorded with the plat.

L. The following certificates, which may be combined where appropriate:

1. A certificate signed and acknowledged by all parties having any record title interest in the land, consenting to the preparation and recording of the plat;

2. A certificate signed and acknowledged as above, dedicating all parcels of land shown on the final map as intended for any public use without any reservation or restriction whatsoever, except those parcels which are intended for the exclusive use of the lot;

3. A certificate signed by the engineer or the surveyor responsible for the survey and final map. The seal and signature of the engineer or surveyor.

17.22.020 ADDITIONAL REQUIRED INFORMATION

The following must accompany the final plat application:

A. A preliminary title report issued by a title insurance company in the name of the owner of the land, showing all parties whose consent is necessary and their interest in the premises.

B. Sheets and drawings signed by a professional civil engineer registered in Oregon showing the following:

1. Traverse data including the coordinates of the boundary of the subdivision and showing the error of closure, if any;
2. The computation of all distances, angles, courses, and lot areas shown on the final map;
3. Ties to existing monuments, adjacent subdivisions, and street corners;
4. Profiles of finished grade at centerline of all streets and public ways and a plan profile for all utilities.

C. A copy of any deed restriction applicable to the subdivision.

17.22.030 APPROVAL OF FINAL PLAT

Approval of the final plat must be indicated by signature of the Planning Manager and City Engineer.

17.22.040 FILING

A. Once the City has reviewed and approved the final plat, the applicant must submit the final plat to the County for signatures of County officials as required by ORS Chapter 92.. The final plat must be recorded with any deed restrictions required as a condition of approval prior to the issuance of any development permits.

B. Proof of recording. Upon final recording with the County, the applicant must submit to the City an electronic copy of the recorded final plat and a copy of recorded deed restrictions. The applicant must submit the copy of the recorded plat to the City prior to the issuance of any development permits on the newly created lots.

17.22.050 NOTICE FOR IMPROVEMENTS

Before approval is certified on the final plat, the applicant must either install required improvements and repair existing streets and other public facilities damaged in the development of the subdivision or file with the City Engineer a notice specifying the period within which required improvements and repairs will be completed. In either case, the applicant must reimburse the City for the cost of plan review and construction inspection by the City at a rate established by the City Council. All required improvements must be guaranteed and bonded as provided in Chapter 17.32 of this title.

17.22.060 BOND

A. The applicant must file with the notice one of the following to assure their full and faithful performance:

1. An agreement to make improvements in a form approved by the City Attorney;
2. A letter of credit;
3. Cash.

B. Such assurance of full and faithful performance must be for a sum determined by the City Engineer as sufficient to cover the cost of the improvements and repairs.

C. If the applicant fails to carry out said improvements and the City has unreimbursed costs or expenses resulting from such failure, the City may call the bond or cash deposit for reimbursement. If the amount of the bond or cash deposit exceeds the cost incurred by the City, the City must release the remainder. If the amount of the bond or cash deposit is less than the cost incurred by the City, the applicant will be liable to the City for the difference.

(Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.24**REQUIREMENTS FOR TRACTS AND EASEMENTS**

A. Ownership of tracts. Tracts must be owned as follows unless otherwise specified in this Title or the land use decision:

1. The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;
2. The Homeowners' Association, or similar entity, for the area served by the tract;
3. A public or private non-profit organization; or
4. The City or other jurisdiction.

B. Maintenance agreement. The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract or easement; however, facilities within the tract or easement that will be maintained by a specified City agency may be recorded in a separate maintenance agreement. The maintenance agreement must be approved by the City in advance of Final Plat approval and must be submitted to the County Recorder to be recorded with the Final Plat.

(Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.26

MIDDLE HOUSING AND EXPEDITED LAND DIVISIONS

17.26.010 Middle Housing Land Divisions

A. A middle housing land division is a partition or subdivision of a lot or parcel on which a middle housing project has been developed or approved for development under the provisions of this code and ORS 197.758. Middle housing land divisions are regulated by this code and ORS Chapter 92. Townhouses, by definition, are already on their own lots, so a middle housing land division is not applicable to townhouse developments. Following the land division, the units of land created in a middle housing land division, the sublots or subparcels, will be collectively considered a single lot or parcel for all but platting and property transfer purposes under City code and state rules and statutes, including:

1. Lot standards such as size, setback, lot coverage, and lot width and depth;
2. Definition of unit types (e.g., a detached quadplex development where each unit is on its own lot through a middle housing land division would still be considered a detached quadplex development rather than four lots with single detached units);
3. Allowed number of dwelling units and accessory dwelling units; and
4. Compliance with middle housing rules and statutes in ORS 197 and OAR 660-046.

B. Applications for any land division affecting middle housing as provided in ORS 197.758(2) must be processed as an expedited land division process as outlined in ORS 197.360 to 197.380. Pursuant to the expedited land division process, a middle housing land division will be processed according to Section 19.1005 Type II Review. Further division of the resulting lots or parcels (sublots) in an approved middle housing land division is prohibited.

C. Approval through two-step process. A middle housing land division requires a two-step process: a preliminary plat and a final plat.

1. Preliminary plat. A middle housing land division preliminary plat application is processed through an expedited Type II procedure, as provided in Section 19.1005.

2. Final plat. The preliminary plat must be approved before the final plat can be submitted for approval. The final plat must satisfy all conditions of approval imposed as part of the preliminary plat approval.

D. Approval criteria—Preliminary plat. The approval authority may approve, approve with conditions, or deny a middle housing land division preliminary plat based on the following approval criteria:

1. The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards.
2. The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.
3. The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).
4. The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.
5. A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.
6. Approval of a preliminary plat for a middle housing land division will be granted if the Planning Manager finds that the applicant has met all of the following criteria:
 - a. The middle housing development complies with the Oregon Residential Specialty code and the applicable middle housing regulations in this code. To demonstrate compliance with this criterion, the applicant must submit approved building permits or concurrent building permits demonstrating that existing or proposed structures comply with the Oregon Residential Specialty Code and middle housing regulations in Titles 12 and 19.
 - b. The middle housing development is in compliance with the land use regulations applicable to the parent lot allowed under ORS 197.758(5).
 - c. Separate utility service connections for public water, sewer, and stormwater will be provided for each dwelling unit.
 - d. Easements will be provided as necessary for each dwelling unit on the site for:
 - (1) Locating, accessing, replacing, and servicing all utilities;
 - (2) Pedestrian access from each dwelling unit to a private or public road;
 - (3) Any common use areas or shared building elements;
 - (4) Any dedicated driveways or parking; and
 - (5) Any dedicated common area.

e. Exactly one dwelling unit will be located on each subplot except for lots or tracts used as common areas, on which no dwelling units will be permitted.

f. Buildings or structures on a subplot will comply with applicable building codes provisions relating to new property lines.

g. Structures or buildings located on the sublots will comply with the Oregon Residential Specialty Code.

h. Where a resulting lot abuts a street that does not meet City standards, street frontage improvements will be constructed and, if necessary, additional right-of-way will be dedicated, pursuant to Chapter 19.700.

i. The proposed middle housing land division will not cause any existing improvements on the sublots to be inconsistent with applicable standards in this land use code.

E. Conditions of Approval

The approval authority may attach such conditions as are necessary to carry out the applicable ordinances and regulations and may require access control strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties.

1. The City will attach conditions of approval of a preliminary plat for a middle housing land division to:

a. Require that a notation appear on the final plat indicating:

(1) The sublots shown on the tentative plan were created pursuant to a middle housing land division and may not be further divided.

(2) The middle housing developed on the sublots shown on the preliminary plat must remain middle housing and will not be considered to be any other housing type as a result of the middle housing land division.

(3) Accessory dwelling units are not permitted on sublots resulting from a middle housing land division.

(4) Ensure that improvements associated with review criteria in this section are provided.

b. The preliminary plat approval of a middle housing land division is void if and only if a final middle housing land division plat is not approved within three years of the tentative approval. (Ord. 2219 § 2 (Exh. B), 2022; Ord. 1965 §§ 6, 7, 2006; Ord. 1907 (Attach. 1), 2002)

F. Approval criteria – Final plat. The Planning Manager and the City Engineer must review the final plat and must approve or deny the final plat based on findings of compliance with the following:

1. The final plat complies with the preliminary plat approved by the approval authority and all conditions of approval have been satisfied.
2. The preliminary plat has not lapsed.
3. The streets and roads for public use are dedicated without reservation or restriction other than revisionary rights upon vacation of any such street or road and easements for public utilities.
4. The plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal, and water supply systems.
5. All common improvements required as conditions of approval have been described and referenced on the plat, and where appropriate, instruments to be recorded have been submitted.
6. The plat complies with Title 19 and other applicable ordinances and regulations.
7. Submission of signed deeds when access control strips are shown on the plat.
8. The plat contains an affidavit by the land surveyor who surveyed that the land represented on the plat was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92.060, and indicating the initial point of the survey, and giving the dimensions and kind of such monument, and its reference to some corner established by the U.S. Survey or giving 2 or more objects for identifying its location.
9. The final plat includes the following:
 - a. A note prohibiting further division of the sublots;
 - b. Labels and descriptions for all tracts;
 - c. A reference to any deed restrictions imposed on the lot or sublots as a condition of approval of the original lot creation, subplot plat, or development approval; and

d. The middle housing developed on the sublots shown on the final plat must remain middle housing and will not be considered to be any other housing type as a result of the middle housing land division. (Ord. 2219 § 2 (Exh. B), 2022; Ord. 1907 (Attach. 1), 2002)

10. The City's engineering department has provided written confirmation that a sewage disposal system will be available to the subplot line of each subplot depicted in the final subplot plat.

11. All public improvements have been installed and inspected and have been approved.

12. A copy of the recorded document establishing a homeowner's association or similar entity to manage all commonly held areas located in tracts has been provided to the City. At a minimum this document must include the following:

a. A description of the common elements located in tracts.

b. An allocation to each unit included in the subplot plat of an undivided and equal interest in the common elements and the method used to establish the allocation.

c. An establishment of use rights for common elements, including responsibility for enforcement, and

d. A maintenance agreement for common elements, including an allocation or method of determining liability for a failure to maintain.

17.26.020 Expedited Land Division

Approval through two-step process. An expedited land division requires a two-step process: a preliminary plat and a final plat.

A. Preliminary Plat. Expedited land divisions are defined by ORS 197.360(1) and are processed according to Section 19.1005, Type II Review. The expedited land division/middle housing land division review process provides for review by the Planning Manager of an application based on provisions specified in this land use code. The application process includes notice to nearby occupants and property owners to allow for public comments prior to the Planning Manager's decision. Eligibility and approval criteria are detailed in Subsection 17.12.040.A.7 of this chapter.

B. Final plat. The preliminary plat must be approved before the final plat can be submitted for approval. The final plat must satisfy all conditions of approval imposed as part of the preliminary plat approval.

C. Approval criteria – Preliminary plat. The approval authority may approve, approve with conditions, or deny a preliminary plat for an expedited land division based on the following approval criteria:

1. The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards.
2. The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.
3. The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).
4. The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.
5. A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.
6. The proposed partition only includes land zoned for residential uses;
7. The parcels created will only be developed for residential use, including recreational or open space accessory to residential use;
8. The land division satisfies minimum street or other right-of-way connectivity standards established by the City's Transportation System Plan, Public Works Standards, and Chapter 19.700;
9. The land division will not provide for dwellings or accessory buildings to be located on land that is specifically mapped and designated in the comprehensive plan and land use regulations for full or partial protection of natural features under the statewide planning goals that protect:
 - a. Open spaces, mapped historic properties as identified on Map 3 on the comprehensive plan, and mapped natural resources as regulated by Section 19.402; or
 - b. The Willamette River Greenway as regulated by Section 19.401.
10. The land division will result in development that either:
 - a. Creates enough lots or parcels to allow building residential units at 80% or more of the maximum net density permitted by the zoning designation of the site; or

b. Will be sold or rented to households with incomes below 120% of the median family income for Clackamas County.

D. Approval criteria – Final plat. The Planning Manager and the City Engineer must review the final plat and must approve or deny the final plat based on findings of compliance with the following:

1. The final plat complies with the preliminary plat approved by the approval authority and all conditions of approval have been satisfied.
2. The preliminary plat has not lapsed.
3. The streets and roads for public use are dedicated without reservation or restriction other than revisionary rights upon vacation of any such street or road and easements for public utilities.
4. The plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal, and water supply systems.
5. All common improvements required as conditions of approval have been described and referenced on the plat, and where appropriate, instruments to be recorded have been submitted.
6. The plat complies with the Zoning Ordinance and other applicable ordinances and regulations.
7. Submission of signed deeds when access control strips are shown on the plat.
8. The plat contains an affidavit by the land surveyor who surveyed that the land represented on the plat was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92.060, and indicating the initial point of the survey, and giving the dimensions and kind of such monument, and its reference to some corner established by the U.S. Survey or giving two or more objects for identifying its location.

(Ord. 2219 § 2 (Exh. B), 2022; Ord. 2168 § 2, 2019; Ord. 2025 § 3, 2011; Ord. 2001 § 2, 2009; amended during Supp. No. 2; Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.28

DESIGN STANDARDS

17.28.010 CONFORMITY OF SUBDIVISION

Partitions and subdivisions must conform with any development plans of the City and must take into consideration any preliminary plans made in anticipation thereof and must conform with the requirements of state laws and with the standards established by the City.

17.28.020 PUBLIC FACILITY IMPROVEMENTS

All land divisions and boundary changes that increase the number of lots must be subject to the requirements and standards contained in Chapter 19.700 Public Facility Improvements and the Public Works Standards for improvements to streets, sidewalks, bicycle facilities, transit facilities, and public utilities.

17.28.030 EASEMENTS

A. Utility Lines

Easements for sewers, water mains, electric lines, or other public utilities must be dedicated wherever necessary. The easements must be provided in accordance with applicable design standards in the Public Works Standards.

B. Watercourses

If a subdivision is traversed by a watercourse such as a drainageway, channel, or stream, there must be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of the watercourse, and such further width as will be adequate for the purpose of construction and maintenance. Streets, parkways, bicycle ways, or pedestrian ways parallel to major watercourses may be required.

17.28.040 GENERAL LOT DESIGN

This section does not apply to units of land that are created for purposes other than land development including parks, natural areas, right-of-way dedications, or reservations of a similar nature. Lots and tracts created for cottage cluster housing development, per Subsection 19.505.4, are also exempt from the requirements of this section.

A. Size and Shape

Lot size, width, shape, and orientation must be appropriate for the location and the type of use contemplated. Minimum lot standards must conform to Title 19. Lot shape standards may be adjusted subject to Section 19.911 Variances.

B. Rectilinear Lots Required

Lot shape must be rectilinear, except where not practicable due to location along a street radius, or existing lot shape.

C. Limits on Compound Lot Line Segments

Cumulative lateral changes in direction of a side or rear lot line exceeding 20% of the distance between opposing lot corners along a given lot line may only be permitted through the variance provisions of MMC Subsection 19.911. Changes in direction must be measured from a straight line drawn between opposing lot corners.

D. Limits on Double and Reversed Frontage Lots

Double frontage and reversed frontage lots should be avoided, except where essential to provide separations of residential development from railroads, traffic arteries, or adjacent nonresidential uses, or to overcome specific disadvantages of topography and orientation.

E. Measurement of Required Frontage

Pursuant to the definition and development standards contained in Title 19 for frontage, required frontage must be measured along the street upon which the lot takes access. (

17.28.050 FLAG LOT AND BACK LOT DEVELOPMENT AND FUTURE ACCESS

Applicants for flag lot and back lot partitioning must show that access by means of a dedicated public street is not possible, by submitting an engineering analysis confirming that there is no opportunity for a public street, which must be reviewed and accepted by the City. This does not preclude the City from requiring public pedestrian/bicycle access in place of a public street. Consideration must be given to other inaccessible adjacent or nearby properties for which a jointly dedicated public right-of-way could provide suitable access and avoid other flag lots or back lots.

The creation of flag lots or back lots must not preclude the development of public access to surrounding properties. Where there is the potential for future development on adjacent lots with new roadway development, flag lots or back lots may be allowed as an interim measure. Dedication of the future public right-of-way is required as part of final plat approval.

17.28.060 FLAG LOT AND BACK LOT DESIGN STANDARDS

A. Consistency with the Zoning Ordinance

Flag lot and back lot design must be consistent with Subsection 19.504.8.

B. More than Two Flag Lots or Back Lots Prohibited

The division of any unit of land must not result in the creation of more than two flag lots or back lots within the boundaries of the original parent lot. Successive land divisions that result in more than two flag lots or back lots are prohibited.

17.28.070 FLAG LOTS AND BACK LOTS IN SUBDIVISIONS

Flag lots and back lots are permitted in new subdivisions.

17.28.080 PUBLIC OPEN SPACES

A. Due consideration must be given to the allocation of suitable areas for schools, parks, and playgrounds to be dedicated for public use.

B. Where a proposed park, playground or other public use shown in the Comprehensive Plan or master plan adopted by the City is located in whole or in part in a subdivision, the City may require the dedication or reservation of such area within the subdivision.

C. Where considered desirable by the City, and where the Comprehensive Plan or adopted master plan of the City does not indicate proposed public use area, the City may require the dedication or reservation of areas or sites of a character, extent, and location suitable for the development of parks and other public use.

D. If the applicant is required to reserve land area for park, playground, or other public use, such land must be acquired by the appropriate public agency within 18 months following plat approval, at a price agreed upon prior to approval of the plat, or such reservation must be released to the applicant.

E. New residential projects will require the dedication of land if the development corresponds to park locations defined in the Comprehensive Plan.

F. In exchange for the dedication of parkland, the allowable density on the remaining lands will be increased, so that the overall parcel density remains the same.

17.28.090 LAND DIVISION WITH LEFTOVER PARCEL OR LOT

A. Applicability. This provision applies to residential land division proposals where there is an existing dwelling unit(s) that will be on its own parcel or lot and the remaining property will be "leftover" in that it will require further land division to meet the minimum density standard for the underlying zone.

B. Conditions. An application for a land division may have a maximum of two leftover parcels or lots that are not included as part of a phased subdivision if the following conditions are met:

1. The original parcel or lot has an existing habitable dwelling unit(s) on it built on or before (date of adoption of this code).
2. The leftover parcel(s) or lot(s) must be capable of further development.
3. The proposed land division will not preclude ultimate buildout of the original parcel or lot per an adopted or submitted and approved Concept Plan, as applicable.
4. When a land division places a primary dwelling unit on a parcel or lot separate from an accessory structure or an accessory dwelling, the accessory structure or dwelling must be:

- a. Removed upon transfer of ownership of either parcel or lot; or
- b. An accessory dwelling must be converted to a conforming primary dwelling as part of the land division application.

C. Development of Leftover Parcels or Lots. Leftover parcels or lots created under this provision may not be developed until they are further divided into additional parcels or lots pursuant to this title, where applicable. Parcels or lots created from leftover parcels or lots must be consistent with the standards of the applicable provisions in Title 19, to ensure that the applicable minimum density standard is met.

D. Submittal Requirements. The following must be provided with submittal for the land division:

1. Payment-in-lieu of required future improvements along the existing street frontage(s) of the leftover parcel(s) or lot(s).
2. A deed restriction requiring removal of any applicable accessory structure or accessory dwelling unit upon transfer of ownership of either parcel or lot.
3. A concept plan that includes the following:
 - a. For single detached dwelling and middle housing development:
 - i. A plot plan showing a future platting of the leftover parcel(s) or lot(s) that meets minimum density.
 - ii. Access and street layout, as applicable.
 - iii. Plan sheet showing requirements of other applicable provisions of Title 17.
 - b. For all other uses, including but not limited to multi-unit, commercial, industrial, and mixed-use development:
 - i. A plot plan showing a future platting of the leftover parcel(s) or lot(s) that meets minimum density.
 - ii. Future uses.
 - iii. Building footprints.
 - iv. Parking areas.
 - v. Access and street layout (as applicable).
 - vi. Plan requirements of other applicable provisions of Title 17.

(Ord. 2218 § 2 (Exh. B), 2022; Ord. 2051 § 2, 2012; Ord. 2003 § 2, 2009; Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.32

IMPROVEMENTS

17.32.010 IMPROVEMENT PROCEDURES

In addition to other requirements, improvements installed by the applicant, either as a requirement of these regulations or their own option, must conform to the requirements of this title and to improvement standards and specifications in the Public Works Standards and Chapter 19.700 Public Facility Improvements. The improvements must be installed in accordance with the following procedure:

A. Work must not begin until plans have been checked for adequacy and approved by the City in writing and a performance bond, as provided in Section 17.24.060, and certificate of insurance, as provided in the Public Works Standards, are provided to the City. All such plans, performance bond, and certificate of insurance, must be prepared in accordance with requirements of the City.

B. Work must not begin until the City has been notified in advance, and if work is discontinued for any reason, it must not be resumed until the City is notified.

C. Improvements must be constructed under the inspection and to the satisfaction of the City. The City may require changes in typical sections and details if unusual conditions arising during construction warrant such changes in the public interest.

D. All underground utilities, installed in streets by the applicant, including but not limited to, water, sanitary sewers, and storm drains must be constructed prior to the surfacing of streets. Stubs for service connections must be extended to property lines long enough to avoid disturbing the street improvements when service connections are made. How utilities are to be serviced must be indicated.

E. A map showing all public improvements as built must be filed with the City upon completion of the improvements. All such maps must be prepared in accordance with requirements of the City.

17.32.020 UTILITY UNDERGROUNDING

All utility lines, including, but not limited to, those required for electric, communication, lighting, cable television services, and related facilities must be placed underground. Surface-mounted transformers, surface-mounted connection boxes and meter cabinets, temporary utility service facilities during construction, high-capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above may be placed above ground. The applicant must make all necessary arrangements with the serving utility to provide the underground services.

17.32.030 GUARANTEE

All improvements installed by the applicant must be guaranteed as to workmanship and material for a period of 4 2 years following acceptance by the City. Such guarantee must be secured by cash deposit or maintenance warranty bond in the amount of the value of the improvements as set by the City Engineer. Said cash or bond must comply with the terms and conditions of Section 17.24.060.

(Ord. 2025 § 3, 2011; Ord. 2003 § 2, 2009; Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.44

EXCEPTIONS AND VARIANCES**17.44.010 VARIANCE**

A variance of any provision of this title may only be granted in accordance with Section 19.911.

(Ord. 2025 § 3, 2011; Ord. 1907 (Attach. 1), 2002)

TITLE 19**ZONING****CHAPTER 900 LAND USE APPLICATIONS****19.901 INTRODUCTION**

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval for all required land use applications prior to establishment or construction. Table 19.901 below contains a complete list of the City's land use applications and the location of the provisions that govern their submittal, review, and approval. It also identifies the review type(s) associated with each application type. The review type determines who is given notice about land use and development proposals, when the City has to make a decision on a land use application, and who makes the final decision. Descriptions of the different review types and the procedures associated with them are located in Chapter 19.1000. Decision makers for each review type are listed in Table 19.1001.5.

Table 19.901**Land Use Applications**

Application Type	Municipal Code Location	Review Types
Land Divisions:	Title 17	
Final Plat	Title 17	I
Lot Consolidation	Title 17	I
Partition	Title 17	II
Property Line Adjustment	Title 17	I, II
Replat	Title 17	I, II, III

Subdivision	Title 17	III -II
Middle Housing Land Division	Title 17	II

19.908 EXTENSIONS TO EXPIRING APPROVALS

19.908.1 Purpose

The purpose of this section is to provide for an appropriate and efficient review process for extending the time period during which land use approvals are valid and may be utilized.

19.908.2 Applicability

A. Approvals Eligible for Extensions

An extension may be requested for any unexpired land use application that was required by Titles 14, 17, or 19 of the Milwaukie Municipal Code and that was approved through a Type I, II, or III review.

B. Approvals Not Eligible for Extensions

An extension pursuant to this section may not be requested for an approved land use application that has expired or where other sections of the municipal code specifically prohibit or limit the length or number of extensions allowed.

19.908.3 Review Process

A. General Provisions

1. An extension application must be submitted and approved prior to the expiration date of the approval. An extension application may not be submitted more than 6 months in advance of an expiration date.
2. An extension may be approved up to a maximum of 2 years from the effective date of the extension approval. Additional extensions may be requested. There is no limit to the number of extensions that may be requested or approved. In the case of applications approved under Title 17, an application may be approved up to a maximum of 12 months and only 1 extension request is allowed.
3. If the original application was approved through a Type III review, the Planning Director shall notify the Planning Commission of receipt of an extension application at the same time that public notice is mailed for the application.

4. If an extension application is denied, the applicant may seek approval for the proposed development by resubmitting all applicable land use applications. Such applications are subject to all procedures, approval criteria, and development standards in effect at the time of submission.

CHAPTER 1000 REVIEW PROCEDURES

19.1001 GENERAL PROVISIONS

19.1001.7 Decisions

E. Expiration of Approved Decisions

1. Type I, II, III, and IV land use approvals granted pursuant to this chapter for land use applications submitted on or after May 14, 2011, the effective date of Ordinance #2025, shall expire and become void unless the following criteria are satisfied:

a. For proposals requiring any kind of development permit, the development must complete both of the following steps:

(1) Obtain and pay for all necessary development permits and start construction within 2 years of land use approval.

(2) Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval.

b. For proposals not requiring development permits, the development must utilize its approvals within 4 years of land use approval.

c. For boundary adjustments and land divisions approved under Title 17 Land Division, evidence of recording of the required instruments must be provided to the city within 2 years of the original approval.

Clean Amendments**TITLE 17****LAND DIVISION****Chapters:****17.04 Administration and Enforcement****17.08 Definitions****17.12 Application Procedure****17.16 Application Requirements****17.18 Approval Criteria****17.20 Preliminary Plat****17.22 Final Plat****17.24 Tracts and Easements****17.26 Middle Housing and Expedited Land Divisions****17.28 Design Standards****17.32 Improvements****17.44 Exceptions and Variances**

CHAPTER 17.04**ADMINISTRATION AND ENFORCEMENT****17.04.010 TITLE AND STRUCTURE****A. Title**

The ordinance codified in this title shall be known and may be cited as the “Land Division Ordinance” of the City of Milwaukie.

B. Structure

This title is divided into chapters and sections. Chapter divisions are denoted by the 2-digit number following the title number. Section divisions are identified by the 3-digit number following the chapter division.

17.04.020 AUTHORITY

A. The Planning Manager has the authority to apply, interpret, and enforce the provisions of this title. An appeal from a ruling by the Planning Manager regarding a requirement of this title may be made to the Planning Commission under provisions of Chapter 19.1000.

B. The City Engineer has the authority to accept, conditionally accept, or reject construction and engineering plans and specifications in accordance with professional judgment and accepted engineering or surveying practices.

17.04.030 CONSISTENCY WITH MUNICIPAL CODE

All land divisions and property boundary changes must be consistent with Title 16 Environment, this title, Title 18 Flood Hazard Regulations, and Title 19 Zoning.

17.04.040 APPROVAL REQUIRED

All lot consolidations, land divisions, changes in property boundary lines, and creation of streets or rights-of-way must be approved in accordance with these regulations prior to conveying or recording any instrument effecting a lot consolidation, land division, or property boundary change. A person desiring to partition, subdivide, replat, consolidate, or change property boundaries must submit application for approval as provided in this title and State law.

17.04.050 TIME LIMIT ON APPROVAL**A. Expiration of Approval**

Expiration of approvals are provided in Subsection 19.1001.7.E.

B. Extensions

Extension of approvals are provided in Subsection 19.908. An extension to an expiring land division approval must be approved when the provisions of Subsection 19.908 are met and provided that:

1. No changes are made on the original plan as approved;
2. The applicant can show intent of recording the land division or boundary change within the extension period; and
3. There have been no changes in the ordinance provisions on which the approval was based.

17.04.060 REDUCTION OF LAND BELOW MINIMUM STANDARDS

No unit of land shall be split or reduced by any means in conflict with the requirements of this title or Title 19 of this code. The splitting of a lot or parcel to add to another will not be allowed unless the remaining portion meets all zoning standards for the zone where the land is located, or it is simultaneously consolidated with a contiguous parcel, which will thereafter comply with zoning standards.

17.04.070 CORRECTION OF IMPROPER LAND DIVISION OR BOUNDARY CHANGE

Improper land divisions or boundary changes must be corrected by submission of appropriate applications and by following the associated review procedures prescribed in this title. This section does not preclude enforcement against violations of this title.

17.04.080 FORM OF APPLICATIONS

All applications provided for in this title must be made on forms prescribed by the Planning Manager.

17.04.090 FEES

A fee as established by resolution of the City Council must be paid to the City upon the filing of an application. Such fees will not be refundable.

17.04.100 AMENDMENTS

Legislative amendments to this title must be made in accordance with Chapter 19.1000 and Section 19.902.

17.04.110 DETERMINATIONS OF LEGAL STATUS

Requests for determinations on the legal status of units of land must be processed pursuant to Section 19.903 Code Interpretations and Director Determinations.

17.04.120 RECORDING

- A. Recording instruments for boundary change, subdivision, partition, and replat must be submitted to the Clackamas County Surveyor.
- B. Prior to recording a lot consolidation, property line adjustment, partition plat, or subdivision plat, the applicant must submit the recording instruments to the Planning Manager for a determination of consistency with the City Code and required approvals.
- C. Lot consolidations for units of land legally created by metes and bounds descriptions may be recorded by deed subject to approval of the County Surveyor.
- D. Subdivision and partition plats and replats, must be recorded by plat.
- E. The applicant must submit the copy of the recorded lot consolidation, property line adjustment, partition plat, or subdivision plat survey map to the City prior to the issuance of any development permits on the new or re-configured lots.

17.04.130 MONUMENTATION AND SURVEY

- A. Monuments are required in accordance with ORS Chapter 92.
- B. Monumentation surveys must be filed with the County Surveyor in accordance with ORS Chapters 92 and 209.

17.04.140 VIOLATION—PENALTIES

Violation of any provision of this title is a civil infraction. The civil penalty for violation of this title is identified in the city fee schedule. The cost of completing or correcting any improvements required by this title and incurred by the City may be assessed to persons as part of the civil infraction judgment. Each day a violation continues must be considered a separate violation.

17.04.150 APPEALS

Appeals on actions authorized under this title must be made in accordance with Chapter 19.1000.

(Ord. 2025 § 3, 2011; Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.08

DEFINITIONS

The words and phrases used in this title have the meanings provided in this chapter.

“Access control strip” means a strip of land reserved between the end or side of a street, or of land between a dedicated street of less than full width and an abutting parcel of land, held for access control, future street extension, or widening.

“Applicant” means the person who has filed application for land use action, land division, boundary adjustment or other action requiring a response from the City.

“Approval authority” means the individual or governmental body authorized by this code to take action on applications for actions specified in this title.

“Bicycle way” means a right-of-way for bicyclists.

“Block” means a group of lots, tracts, or parcels which have been subdivided and are entirely surrounded by highways or streets or in part by a well-defined and fixed boundary.

“Boundary change” means the relocation of a property line established by dedication, deed, property line adjustment, lot consolidation, partition, subdivision, and/or replat.

“Buffer strip” means a strip of land of sufficient width to serve as a buffer between dissimilar use districts, existing in a natural or landscaped condition, and located along the edge of a subdivision.

“Building line” means a line on a plat or otherwise described indicating the limit beyond which buildings or structures may not be erected.

“City” means the City of Milwaukie, Oregon.

“Comprehensive Plan” means the plan adopted by the City Council for the guidance of growth and improvement of the City, including modifications or refinements, which may be made from time to time.

“Easement” means the right to use land in a limited way for a stated purpose.

“Expedited land division” means a partition or subdivision of a lot or parcel on which the development of housing is allowed as defined by ORS 197.360(1).

“Land division” means the division of land by partition, subdivision, or replat.

“Lot” means a legally defined unit of land other than a parcel or tract that is a result of a subdivision of land. For general purposes of this title, lot also means legal lots or lots of record under the lawful control, and in the lawful possession, of one distinct ownership. When one owner controls an area defined by multiple adjacent legal lots or lots of record, the owner may define a lot boundary coterminous with one or more legal lots or lots of record within the distinct ownership. Figure 19.201-1 illustrates some of the lot types defined below.

“Back lot” means a lot that does not have frontage on a public street, typically accessed via an easement over another property.

“Flag lot” means a lot that has a narrow frontage on a public street with access provided via a narrow accessway or “pole” to the main part of the lot used for building, which is located behind another lot that has street frontage. There are two distinct parts to the flag lot: the development area or “flag” which comprises the actual building site, and the access strip or “pole” which provides access from the street to the flag.

“Legal lot” means a unit of land other than a parcel or tract created through a subdivision or partition approved by the City.

“Lot of record” means a unit of land for which a deed or other instrument dividing the land was filed with the Clackamas County Recorder, which was not created through a partition or subdivision approved by the City, and which was created prior to October 5, 1973.

“Lot consolidation” means the elimination of a common property line between two or more units of land to form one unit of land.

“Middle housing land division” means a partition or subdivision of a lot or parcel on which the development of middle housing is allowed under ORS 197.758(2) or (3).

“Monument” means a fixed, permanent, and visible landmark indicating boundaries.

“Owner” means the owner of record of real property as shown on the latest tax rolls of Clackamas County, or by the deed records of said County, or a person who is purchasing a parcel of property under contract.

“Parcel” means a single unit of land that is created by a partitioning of land.

“Partition” means either the act of partitioning land or an area of land partitioned.

“Partitioning” means to divide an area of land into two or three parcels within a calendar year but does not include the following:

- A. A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property, or the creation of cemetery lots;

- B. An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with applicable zoning;
- C. The division of land resulting from the recording of a subdivision or condominium plat;
- D. A sale or grant by a person to a public agency or public body for state highway, county road, City street or other right-of-way purposes provided that such road or right-of-way complies with the comprehensive plan and ORS 215.213 (2)(p) to (r) and 215.283 (2)(q) to (s). However, any property divided by the sale or grant of property for State highway, County road, City street or other right-of-way purposes must continue to be considered a single unit of land until such time as the property is further subdivided or partitioned; or
- E. A sale or grant by a public agency or public body of excess property resulting from the acquisition of land by the State, a political subdivision or special district for highways, County roads, City streets or other right-of-way purposes when the sale or grant is part of a property line adjustment incorporating the excess right-of-way into adjacent property. The property line adjustment must be approved or disapproved by the applicable local government. If the property line adjustment is approved, it must be recorded in the deed records of the County where the property is located.

“Pedestrian way” means a right-of-way for pedestrians that is improved or unimproved.

“Person” means an individual, firm, partnership, corporation, company, association, syndicate, or any legal entity, and including any trustee, receiver, assignee, or other similar representative thereof.

“Plat” means and includes a map and other writing containing all the descriptions, locations, dedications, specifications, provisions, and information concerning a partition or subdivision.

“Property line adjustment” means the relocation of a common property line between two abutting units of land that does not result in the creation of a new unit of land.

“Replat” means the act of platting the lots, parcels, and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat, including an increase or decrease in the number of lots.

“Right-of-way” means the area between boundary lines of a public way.

“Sidewalk” means a pedestrian walkway with permanent surfacing to City standards.

“Street” means the width between the boundary lines of every way that provides for public use for the purpose of vehicular and pedestrian traffic and the placement of utilities. “Street” includes the terms “road,” “highway,” “lane,” “place,” “avenue,” “boulevard,” or other similar designations.

- A. “Access street” means a street intended only for access to abutting properties.
- B. “Alley” means a narrow street used for access to the back or side of properties otherwise abutting on another street.
- C. “Major arterial street” means a street that carries both local and through traffic to destinations outside the local community. The major arterial provides access to other communities as well as access through Milwaukie. Public transit to other communities generally use a major arterial.
- D. “Minor arterial street” means a street that carries local traffic between neighborhood areas or to regional facilities. The minor arterial provides access from neighborhood collector streets to community services and to alley and an abutting parcel of land, or a strip other neighborhoods within, or immediately adjacent to the City. Local public transit may use minor arterial streets.
- E. “Collector street” means a street that serves internal traffic within areas having a single land use pattern. The collector streets carry local traffic within a neighborhood area. They carry traffic from the local streets to the minor and/or major arterial network or to schools, local shopping centers, or other local streets within the neighborhood.
- F. “Cul-de-sac” means a short access street terminated by a vehicle turnaround.
- G. “Dead-end street” means a street terminating at a property line, but which may be extended.
- H. “Frontage street” means an access street parallel and adjacent to a major arterial street providing access to abutting properties, but protected from through traffic.
- I. “Local street” means a street that provides direct access to abutting property.

“Subdivide land” means to divide an area or tract of land into four or more lots within a calendar year.

“Subdivision” means either an act of subdividing land or a unit of land subdivided as defined in this title.

“Tract” means a unit of land other than a lot or parcel. A tract is a piece of land created and designated as part of a land division that is not a lot, adjusted lot, lot remnant, lot of record, or a public right-of-way. Tracts are created and designed for a specific purpose. Land uses within a tract are restricted to those uses consistent with the stated purpose as described on the plat, or in the maintenance agreements, or through Conditions, Covenants and Restrictions (CC&Rs). Examples include stormwater management tracts, private street or alley tracts, tree preservation tracts, environmental resource tracts, and open space tracts.

“Unit of land” means a legally created lot, parcel, or other unit of real property legally created by metes and bounds description or other legal means that is recorded on the County land records as defined in ORS 92.010.

(Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.12

APPLICATION PROCEDURE

17.12.010 PURPOSE

The purpose of this chapter is to specify the process and procedures for lot consolidation, property line adjustment, partition, and subdivision,.

17.12.020 APPLICATION PROCEDURE

- A. Applications for land division and property boundary changes will be processed in accordance with Chapter 19.1000 Type I and Type II procedures as indicated in this section.
- B. An increase in the number of lots within the original boundaries of a partition plat must be reviewed as a subdivision when the number of existing lots that are to be modified combined with the number of proposed new lots exceeds 3.
- C. A modification to a plat (i.e., a replat) that relocates or eliminates all or a portion of a common property line between abutting properties, including underlying lot lines, that does not create an additional lot or parcel will be processed as a property line adjustment or lot consolidation. This process requires a deed to be recorded that stipulates the lot to be a single lot for development and legal purposes.
- D. A replat that results in the creation of a new parcel(s) or lot(s) will be processed as a partition or subdivision, depending on the number of resulting lots and according to the definitions provided in Chapter 17.04.

Table 17.12.020 Boundary Change Summary		
Boundary Change Action	Application Type/Land Use Action	Review Type
Consolidating legal lots created by deed.	Lot consolidation	I
Any boundary adjustment that is consistent with the ORS and this title but does not result in a change in the number of lots.	Property Line Adjustment	I
Any boundary adjustment that is affected by a plat restriction.	Property Line Adjustment	II
A land division, modification, or adjustment that results in up to 3 lots.	Partition	II
Any division, modification, or adjustment that results in 4 or more lots.	Subdivision	II
Any land division as defined by ORS 197.360 Expedited Land Division and/or land division of a middle housing project per ORS 197.758.	Expedited Land Division Middle Housing Land Division	II

17.12.030 Lot Consolidation, Property Line Adjustment

- A. Approval process. A lot consolidation or property line adjustment application is processed through a Type I procedure, as provided in Section 19.1004 and the application requirements in Chapter 17.16.
- B. Approval criteria. The approval authority may approve, approve with conditions, or deny a lot consolidation or property line adjustment based on the approval criteria in Section 17.18.010.
- C. Recording requirements. Upon approval of the proposed lot consolidation or property line adjustment, the applicant must record or file the signed lot consolidation or property line adjustment with Clackamas County and submit a copy of the recorded instrument to the City, to be incorporated into the record. References to required recorded deeds must be included on the record of survey.

D. Time limit. The applicant must submit the copy of the recorded lot consolidation or property line adjustment survey map to the City prior to the issuance of any development permits on the reconfigured lots.

17.12.040 Partition

A. Conformance with state statute. All land partition proposals must comply with all state regulations as provided in ORS Chapter 92, Subdivision and Partitions.

B. Prohibition on sale of lots. Sale of lots created through the land partitioning process is prohibited until the final partition plat is recorded.

C. Approval through two-step process. A partition application requires a two-step process: the preliminary plat and the final plat.

1. Preliminary plat. A preliminary plat application is processed through a Type II procedure, as provided in Section 19.1005 and the application requirements in Chapters 17.16 and 17.20.

2. Final plat. The preliminary plat must be approved before the final plat can be submitted for approval. The final plat must satisfy all conditions of approval imposed as part of the preliminary plat approval pursuant to Chapter 17.20.

3. Full compliance with all requirements for subdivision may be required if the Planning Manager should determine that the entire parcel being partitioned is in the process of being divided for the purpose of subdivision. This provision applies if the land to be partitioned exceeds 2 acres and within a year is being partitioned into more than two parcels, any one of which is less than 1 acre.

D. Approval criteria. The approval authority may approve, approve with conditions, or deny a partition based on the approval criteria in Sections 17.18.020 and 17.18.030.

17.12.050 Subdivision

A. Conformance with state statute. All subdivision proposals must comply with all state regulations as provided in ORS Chapter 92, Subdivision and Partitions.

B. Prohibition on sale of lots. Sale of lots created through the subdivision process is prohibited until the final plat is recorded.

C. Approval through two-step process. A subdivision application requires a two-step process: the preliminary plat and the final plat.

1. Preliminary plat. A preliminary plat application is processed through a Type II procedure, as provided in Section 19.1005. An application for a preliminary plat may be reviewed concurrently with an application for a planned development, as provided in Chapter 19.311, Planned Developments.

2. Final plat. The preliminary plat must be approved before the final plat can be submitted for approval. The final plat must satisfy all conditions of approval imposed as part of the preliminary plat approval pursuant to Chapter 17.20.

D. Approval criteria. The approval authority may approve, approve with conditions, or deny a subdivision based on the approval criteria in Sections 17.18.020 and 17.18.030.

(Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.16

APPLICATION REQUIREMENTS AND PROCEDURES

17.16.010 APPLICATION REQUIRED

Application submissions for lot consolidation, property line adjustment, partition, subdivision, and replat must be made in accordance with provisions of this chapter.

17.16.020 DETERMINATION OF COMPLETENESS

Consistency with Submission Requirements

Applications must be reviewed for completeness and consistency with submission requirements of this chapter. Application submissions that do not meet the requirements of this chapter must be deemed incomplete for the purpose of ORS 227.178 and Chapter 19.1000. The City must provide to the applicant notice of whether an application is complete or incomplete in accordance with ORS 227.178 and Subsection 19.1003.3.

17.16.030 WAIVER OF SUBMISSION REQUIREMENTS

A. Certain application submission requirements may be waived at the discretion of the Planning Manager subject to meeting the following conditions:

1. The applicant shows good cause for the requested waiver;
2. The waiver does not compromise a proper and complete review; and

3. The information is not material to describing the proposal or demonstrating compliance with approval criteria.
- B. Application submission requirements that may not be waived include:
1. Signed and completed application form, submission requirements form, and plan checklist;
 2. Property owner's authorization for application to be made;
 3. Detailed narrative description that specifies how the proposal complies with applicable codes; and
 4. Required plans, maps, and drawings.
- C. Application fees may only be waived by action of the City Council. (Ord. 1907 (Attach. 1), 2002)

17.16.040 LOT CONSOLIDATION AND PROPERTY LINE ADJUSTMENT

The following must accompany applications for lot consolidation and property line adjustments:

- A. Completed application forms signed by all owners of property included in the proposal;
- B. Application fee as adopted by the City Council;
- C. Narrative report that describes how the proposal meets applicable approval criteria;
- D. Additional information as may be required by the application check list; and
- E. A surveyed and monumented plan prepared in accordance with ORS 92.060 (7) drawn to scale showing the following details:
 1. Scale, north arrow, and date of map;
 2. Tax map and lot number identifying each property involved in the application;
 3. Adjacent rights-of-way, with width shown;
 4. Location, width, and purpose of any recorded easements and/or plat restrictions;
 5. Proposed property lines and dimensions of the affected lots;
 6. The area of each lot;

7. Location of existing structures to remain and proposed structures, if any, with setbacks shown to all existing and proposed lot lines; and
8. Deeds of the properties involved.
9. Signature block for City signature and approval.

17.16.050 PRELIMINARY PLAT FOR PARTITION AND SUBDIVISION

The following must accompany applications for partition:

- A. Completed application form signed by all owners of property included in the proposal;
- B. Application fee as adopted by the City Council;
- C. Completed and signed submission requirements form and partition checklist or subdivision checklist forms as appropriate;
- D. All information specified on the submission requirements and partition checklist or subdivision checklist forms as appropriate;
- E. Requirements and information specified in Chapter 17.20; and
- F. Any additional information as may be needed to demonstrate compliance with applicable approval criteria. (Ord. 1907 (Attach. 1), 2002)

17.16.060 FINAL PLAT FOR PARTITION AND SUBDIVISION

The following must accompany applications for partition:

- A. A completed application form signed by all owners of property included in the proposal;
- B. The application fee as adopted by the City Council;
- C. Completed and signed submission requirements and final plat checklist forms;
- D. All information specified on the submission requirements and final plat checklist;
- E. A survey prepared by registered land surveyor showing setbacks to existing structures with sufficient detail to demonstrate compliance with yard requirements;
- F. Requirements and information specified in Chapter 17.22; and

G. Any additional information as may be needed to demonstrate compliance with applicable approval criteria.

(Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.18

APPROVAL CRITERIA

17.18.010 APPROVAL CRITERIA FOR LOT CONSOLIDATION AND PROPERTY LINE ADJUSTMENT

A. Approval Criteria

The approval authority may approve, approve with conditions, or deny a lot consolidation or property line adjustment based on the following approval criteria. The applicant for a lot consolidation or property line adjustment must demonstrate the following:

1. Compliance with this title and Title 19 of this code.
2. The boundary change will allow reasonable development of the affected lots and will not create the need for a variance of any land division or zoning standard.
3. Boundary changes must not reduce residential density below minimum density requirements of the zoning district in which the property is located.

17.18.020 APPROVAL CRITERIA FOR PRELIMINARY PLAT

A. Approval Criteria

The approval authority may approve, approve with conditions, or deny a preliminary plat based on the following approval criteria:

1. The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards.
2. The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.
3. The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

4. The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.
5. A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

17.18.030 APPROVAL CRITERIA FOR FINAL PLAT

Following the Type I procedure, the Planning Manager and the City Engineer must review the final plat and must approve or deny the final plat based on findings of compliance with the following:

- A. The final plat complies with the preliminary plat approved by the approval authority and all conditions of approval have been satisfied.
- B. The preliminary plat has not lapsed.
- C. The streets and roads for public use are dedicated without reservation or restriction other than revisionary rights upon vacation of any such street or road and easements for public utilities.
- D. The plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal, and water supply systems.
- E. All common improvements required as conditions of approval have been described and referenced on the plat, and where appropriate, instruments to be recorded have been submitted.
- F. The plat complies with the Zoning Ordinance and other applicable ordinances and regulations.
- G. Submission of signed deeds when access control strips are shown on the plat.
- H. The plat contains an affidavit by the land surveyor who surveyed that the land represented on the plat was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92.060, and indicating the initial point of the survey, and giving the dimensions and kind of such monument, and its reference to some corner established by the U.S. Survey or giving 2 or more objects for identifying its location.

(Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.20

PRELIMINARY PLAT**17.20.010 SUBMISSION OF PLANS**

Applicants for partition and subdivision must prepare a preliminary plat and such improvement plans and other supplemental material including as may be required to describe and represent the objectives of the proposal.

17.20.020 SCALE

The preliminary plat must be drawn at a scale and on a sheet size that reliably and conveniently represents design details sufficient for the proper plan review and determination of compliance with this title.

17.20.030 GENERAL INFORMATION TO BE SHOWN ON THE PRELIMINARY PLAT

A. Preliminary plats must be prepared by an Oregon registered professional land surveyor in compliance with ORS 92.060.

B. Preliminary plats must include all information as identified on the application forms and preliminary plat checklist prescribed by the Planning Manager.

C. Vicinity map must be drawn at an appropriate scale, showing all existing subdivisions, streets, and unsubdivided land between the proposed subdivision and the nearest existing arterial or collector streets, and showing how proposed streets may be extended to connect with existing streets. At a minimum, the vicinity map must depict future street connections for land within 400 feet of the subject property.

17.20.040 BUILDING LINES PROHIBITED

Platted building lines are prohibited. The effect of building lines may be executed through recordation of instruments, which must be referenced on the recorded plat.

17.20.050 EXISTING CONDITIONS

The following must be shown on the preliminary plat:

A. Location, width, and names of all existing or platted streets within or adjacent to the tract, together with easements, railroad right-of-way, and other important features, such as section lines and corners, City boundary lines, and monuments.

B. Contour lines related to an established benchmark or other datum approved by the Engineering Director, with intervals at a minimum of 2 ft for slopes up to 10% and 5 ft for slopes over 10%.

- C. Location within the area to be divided, and in the adjoining streets and property, of existing sewers, water mains, culverts, storm drain system, and electric conduits or lines proposed to service the property to be subdivided, and invert elevations of sewer manholes, drain pipes, and culverts.
- D. Zoning and existing uses within the tract and 200 ft on all sides, including the location and use of all existing structures indicating those that will remain and those to be removed.
- E. Approximate location of areas subject to inundation or stormwater overflow with approximate high-water elevation. Location, width, direction, and flow of all watercourses on or abutting the tract including wetlands and watercourses as shown on City-adopted natural resource and Title 3 maps.
- F. Natural features such as rock outcroppings, drainages whether seasonal or perennial, wooded areas, and trees, including type and caliper, per the requirements for a tree inventory identified in MMC 16.32.042.
- G. Floodway and floodplain boundary.
- H. Areas containing slopes of 25% or greater.

17.20.060 PROPOSED CONDITIONS

- A. The plat must include the following information:
1. Date, north point, scale, address, assessor reference number, and legal description;
 2. Name and address of the record owner or owners and of the person who prepared the site plan;
 3. Approximate acreage and square feet under a single ownership, or if more than one ownership is involved, the total contiguous acreage of all landowners directly involved in the partition;
 4. For land adjacent to and within the area to be divided, the locations, names, and existing widths of all streets, driveways, public safety accesses, easements, and rights-of-way; location, width, and purpose of all other existing easements; and location and size of sewer and waterlines, drainage ways, power poles, and other utilities;
 5. Location of existing structures, identifying those to remain in place and those to be removed;
 6. Lot design and layout, showing proposed setbacks, landscaping, buffers, driveways, lot sizes, and relationship to existing or proposed streets and utility easements; and tree preservation and planting information per the requirements in MMC 16.32.042.

7. Existing development and natural features for the site and adjacent properties, including those properties within 100 ft of the proposal, showing buildings, mature trees, topography, and other structures;
8. Elevation and location of flood hazard boundaries;
9. The location, width, name, and approximate centerline grade and curve radii of all streets; the relationship of all streets to any projected streets planned by the City; whether roads will continue beyond the plat; and existing and proposed grade profiles. No street name may be used which will duplicate or be confused with the name of an existing street, except for extensions of existing streets. Street names and numbers must conform to the established pattern in the surrounding area.
10. Improvements to be made by the developer and the approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements must be submitted so that they may be checked for compliance with the objectives of this title, State law, and other applicable City ordinances. If the nature of the improvements is such that it is impractical to prepare all necessary details prior to approval of the preliminary plat, the additional details must be submitted with the request for final plat approval. (Ord. 2003 § 2, 2009; Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.22

FINAL PLAT

17.22.010 REQUIRED PLAT INFORMATION

In addition to that otherwise specified by law, the following information must be shown on the final plat:

- A. The date, scale, north point, legend, plat boundary, and controlling topography such as creeks and highways;
- B. Legal description of the tract boundaries;
- C. Name of the owner(s), applicant(s), and surveyor.
- D. Reference points of existing surveys identified, related to the plat by distances and bearings, and referenced to a field book or map as follows:
 1. Stakes, monuments, or other evidence found on the ground and used to determine the boundaries of the subdivision;
 2. Adjoining corners of adjoining subdivisions;
 3. Other monuments found or established in making the survey of the subdivision or required to be installed by provision of this title.

- E. The exact location and width of streets and easements intersecting the boundary of the tract.
- F. Lines with dimensions, bearings or deflection angles, radii, arcs, points of curvature, and tangent bearings for tract, lot, and block boundaries, and street right-of-way and centerlines. Tract boundaries and street bearings must be shown to the nearest second with basis of bearings approved in advance by the County Surveyor. All distances must be shown to the nearest hundredth of a foot. No ditto marks may be used.
- G. The width of the portion of streets being dedicated, the width of any existing right-of-way, and the width of each side of the centerline. For streets on curvature, curve data must be based on the street centerline and, in addition to the centerline dimensions, the radius and central angle must be indicated.
- H. Easements denoted by fine dotted lines, clearly identified and, if already of record, their recorded reference. If an easement is not definitely located of record, a statement of the easement. The width of the easement, its length and bearing, and sufficient ties to locate the easement with respect to the subdivision must be shown. If the easement is being dedicated by the map, it must be properly referenced in the owner's certificates of dedication.
- I. Lot numbers beginning with the number "1" and numbered consecutively.
- J. Land tracts to be dedicated or reserved for any purpose, public or private, as distinguished from residential lots intended for sale.
- K. References to any agreements including conditions of approval or special building restrictions that will be recorded with the plat.
- L. The following certificates, which may be combined where appropriate:
1. A certificate signed and acknowledged by all parties having any record title interest in the land, consenting to the preparation and recording of the plat;
 2. A certificate signed and acknowledged as above, dedicating all parcels of land shown on the final map as intended for any public use without any reservation or restriction whatsoever, except those parcels which are intended for the exclusive use of the lot;
 3. A certificate signed by the engineer or the surveyor responsible for the survey and final map. The seal and signature of the engineer or surveyor.

17.22.020 ADDITIONAL REQUIRED INFORMATION

The following must accompany the final plat application:

- A. A preliminary title report issued by a title insurance company in the name of the owner of the land, showing all parties whose consent is necessary and their interest in the premises.

- B. Sheets and drawings signed by a professional civil engineer registered in Oregon showing the following:
1. Traverse data including the coordinates of the boundary of the subdivision and showing the error of closure, if any;
 2. The computation of all distances, angles, courses, and lot areas shown on the final map;
 3. Ties to existing monuments, adjacent subdivisions, and street corners;
 4. Profiles of finished grade at centerline of all streets and public ways and a plan profile for all utilities.
- C. A copy of any deed restriction applicable to the subdivision.

17.22.030 APPROVAL OF FINAL PLAT

Approval of the final plat must be indicated by signature of the Planning Manager and City Engineer.

17.22.040 FILING

A. Once the City has reviewed and approved the final plat, the applicant must submit the final plat to the County for signatures of County officials as required by ORS Chapter 92.. The final plat must be recorded with any deed restrictions required as a condition of approval prior to the issuance of any development permits.

B. Proof of recording. Upon final recording with the County, the applicant must submit to the City an electronic copy of the recorded final plat and a copy of recorded deed restrictions. The applicant must submit the copy of the recorded plat to the City prior to the issuance of any development permits on the newly created lots.

17.22.050 NOTICE FOR IMPROVEMENTS

Before approval is certified on the final plat, the applicant must either install required improvements and repair existing streets and other public facilities damaged in the development of the subdivision or file with the City Engineer a notice specifying the period within which required improvements and repairs will be completed. In either case, the applicant must reimburse the City for the cost of plan review and construction inspection by the City at a rate established by the City Council. All required improvements must be guaranteed and bonded as provided in Chapter 17.32 of this title.

17.22.060 BOND

A. The applicant must file with the notice one of the following to assure their full and faithful performance:

1. An agreement to make improvements in a form approved by the City Attorney;
2. A letter of credit;
3. Cash.

B. Such assurance of full and faithful performance must be for a sum determined by the City Engineer as sufficient to cover the cost of the improvements and repairs.

C. If the applicant fails to carry out said improvements and the City has unreimbursed costs or expenses resulting from such failure, the City may call the bond or cash deposit for reimbursement. If the amount of the bond or cash deposit exceeds the cost incurred by the City, the City must release the remainder. If the amount of the bond or cash deposit is less than the cost incurred by the City, the applicant will be liable to the City for the difference.

(Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.24**REQUIREMENTS FOR TRACTS AND EASEMENTS**

A. Ownership of tracts. Tracts must be owned as follows unless otherwise specified in this Title or the land use decision:

1. The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;
2. The Homeowners' Association, or similar entity, for the area served by the tract;
3. A public or private non-profit organization; or
4. The City or other jurisdiction.

B. Maintenance agreement. The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract or easement; however, facilities within the tract or easement that will be maintained by a specified City agency may be recorded in a separate maintenance agreement. The maintenance agreement must be approved by the City in advance of Final Plat approval and must be submitted to the County Recorder to be recorded with the Final Plat.

(Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.26

MIDDLE HOUSING AND EXPEDITED LAND DIVISIONS

17.26.010 Middle Housing Land Divisions

A. A middle housing land division is a partition or subdivision of a lot or parcel on which a middle housing project has been developed or approved for development under the provisions of this code and ORS 197.758. Middle housing land divisions are regulated by this code and ORS Chapter 92. Townhouses, by definition, are already on their own lots, so a middle housing land division is not applicable to townhouse developments. Following the land division, the units of land created in a middle housing land division, the sublots or subparcels, will be collectively considered a single lot or parcel for all but platting and property transfer purposes under City code and state rules and statutes, including:

1. Lot standards such as size, setback, lot coverage, and lot width and depth;
2. Definition of unit types (e.g., a detached quadplex development where each unit is on its own lot through a middle housing land division would still be considered a detached quadplex development rather than four lots with single detached units);
3. Allowed number of dwelling units and accessory dwelling units; and
4. Compliance with middle housing rules and statutes in ORS 197 and OAR 660-046.

B. Applications for any land division affecting middle housing as provided in ORS 197.758(2) must be processed as an expedited land division process as outlined in ORS 197.360 to 197.380. Pursuant to the expedited land division process, a middle housing land division will be processed according to Section 19.1005 Type II Review. Further division of the resulting lots or parcels (sublots) in an approved middle housing land division is prohibited.

C. Approval through two-step process. A middle housing land division requires a two-step process: a preliminary plat and a final plat.

1. Preliminary plat. A middle housing land division preliminary plat application is processed through an expedited Type II procedure, as provided in Section 19.1005.

2. Final plat. The preliminary plat must be approved before the final plat can be submitted for approval. The final plat must satisfy all conditions of approval imposed as part of the preliminary plat approval.

D. Approval criteria—Preliminary plat. The approval authority may approve, approve with conditions, or deny a middle housing land division preliminary plat based on the following approval criteria:

1. The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards.
2. The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.
3. The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).
4. The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.
5. A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.
6. Approval of a preliminary plat for a middle housing land division will be granted if the Planning Manager finds that the applicant has met all of the following criteria:
 - a. The middle housing development complies with the Oregon Residential Specialty code and the applicable middle housing regulations in this code. To demonstrate compliance with this criterion, the applicant must submit approved building permits or concurrent building permits demonstrating that existing or proposed structures comply with the Oregon Residential Specialty Code and middle housing regulations in Titles 12 and 19.
 - b. The middle housing development is in compliance with the land use regulations applicable to the parent lot allowed under ORS 197.758(5).
 - c. Separate utility service connections for public water, sewer, and stormwater will be provided for each dwelling unit.
 - d. Easements will be provided as necessary for each dwelling unit on the site for:
 - (1) Locating, accessing, replacing, and servicing all utilities;
 - (2) Pedestrian access from each dwelling unit to a private or public road;
 - (3) Any common use areas or shared building elements;
 - (4) Any dedicated driveways or parking; and
 - (5) Any dedicated common area.

- e. Exactly one dwelling unit will be located on each subplot except for lots or tracts used as common areas, on which no dwelling units will be permitted.
- f. Buildings or structures on a subplot will comply with applicable building codes provisions relating to new property lines.
- g. Structures or buildings located on the sublots will comply with the Oregon Residential Specialty Code.
- h. Where a resulting lot abuts a street that does not meet City standards, street frontage improvements will be constructed and, if necessary, additional right-of-way will be dedicated, pursuant to Chapter 19.700.
- i. The proposed middle housing land division will not cause any existing improvements on the sublots to be inconsistent with applicable standards in this land use code.

E. Conditions of Approval

The approval authority may attach such conditions as are necessary to carry out the applicable ordinances and regulations and may require access control strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties.

1. The City will attach conditions of approval of a preliminary plat for a middle housing land division to:

a. Require that a notation appear on the final plat indicating:

(1) The sublots shown on the tentative plan were created pursuant to a middle housing land division and may not be further divided.

(2) The middle housing developed on the sublots shown on the preliminary plat must remain middle housing and will not be considered to be any other housing type as a result of the middle housing land division.

(3) Accessory dwelling units are not permitted on sublots resulting from a middle housing land division.

(4) Ensure that improvements associated with review criteria in this section are provided.

b. The preliminary plat approval of a middle housing land division is void if and only if a final middle housing land division plat is not approved within three years of the tentative approval. (Ord. 2219 § 2 (Exh. B), 2022; Ord. 1965 §§ 6, 7, 2006; Ord. 1907 (Attach. 1), 2002)

F. Approval criteria – Final plat. The Planning Manager and the City Engineer must review the final plat and must approve or deny the final plat based on findings of compliance with the following:

1. The final plat complies with the preliminary plat approved by the approval authority and all conditions of approval have been satisfied.
2. The preliminary plat has not lapsed.
3. The streets and roads for public use are dedicated without reservation or restriction other than revisionary rights upon vacation of any such street or road and easements for public utilities.
4. The plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal, and water supply systems.
5. All common improvements required as conditions of approval have been described and referenced on the plat, and where appropriate, instruments to be recorded have been submitted.
6. The plat complies with Title 19 and other applicable ordinances and regulations.
7. Submission of signed deeds when access control strips are shown on the plat.
8. The plat contains an affidavit by the land surveyor who surveyed that the land represented on the plat was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92.060, and indicating the initial point of the survey, and giving the dimensions and kind of such monument, and its reference to some corner established by the U.S. Survey or giving 2 or more objects for identifying its location.
9. The final plat includes the following:
 - a. A note prohibiting further division of the sublots;
 - b. Labels and descriptions for all tracts;
 - c. A reference to any deed restrictions imposed on the lot or sublots as a condition of approval of the original lot creation, subplot plat, or development approval; and

d. The middle housing developed on the sublots shown on the final plat must remain middle housing and will not be considered to be any other housing type as a result of the middle housing land division. (Ord. 2219 § 2 (Exh. B), 2022; Ord. 1907 (Attach. 1), 2002)

10. The City's engineering department has provided written confirmation that a sewage disposal system will be available to the subplot line of each subplot depicted in the final subplot plat.

11. All public improvements have been installed and inspected and have been approved.

12. A copy of the recorded document establishing a homeowner's association or similar entity to manage all commonly held areas located in tracts has been provided to the City. At a minimum this document must include the following:

- a. A description of the common elements located in tracts.
- b. An allocation to each unit included in the subplot plat of an undivided and equal interest in the common elements and the method used to establish the allocation.
- c. An establishment of use rights for common elements, including responsibility for enforcement, and
- d. A maintenance agreement for common elements, including an allocation or method of determining liability for a failure to maintain.

17.26.020 Expedited Land Division

Approval through two-step process. An expedited land division requires a two-step process: a preliminary plat and a final plat.

A. Preliminary Plat. Expedited land divisions are defined by ORS 197.360(1) and are processed according to Section 19.1005, Type II Review. The expedited land division/middle housing land division review process provides for review by the Planning Manager of an application based on provisions specified in this land use code. The application process includes notice to nearby occupants and property owners to allow for public comments prior to the Planning Manager's decision. Eligibility and approval criteria are detailed in Subsection 17.12.040.A.7 of this chapter.

B. Final plat. The preliminary plat must be approved before the final plat can be submitted for approval. The final plat must satisfy all conditions of approval imposed as part of the preliminary plat approval.

C. Approval criteria – Preliminary plat. The approval authority may approve, approve with conditions, or deny a preliminary plat for an expedited land division based on the following approval criteria:

1. The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards.
2. The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.
3. The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).
4. The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.
5. A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.
6. The proposed partition only includes land zoned for residential uses;
7. The parcels created will only be developed for residential use, including recreational or open space accessory to residential use;
8. The land division satisfies minimum street or other right-of-way connectivity standards established by the City's Transportation System Plan, Public Works Standards, and Chapter 19.700;
9. The land division will not provide for dwellings or accessory buildings to be located on land that is specifically mapped and designated in the comprehensive plan and land use regulations for full or partial protection of natural features under the statewide planning goals that protect:
 - a. Open spaces, mapped historic properties as identified on Map 3 on the comprehensive plan, and mapped natural resources as regulated by Section 19.402; or
 - b. The Willamette River Greenway as regulated by Section 19.401.
10. The land division will result in development that either:
 - a. Creates enough lots or parcels to allow building residential units at 80% or more of the maximum net density permitted by the zoning designation of the site; or

- b. Will be sold or rented to households with incomes below 120% of the median family income for Clackamas County.

D. Approval criteria – Final plat. The Planning Manager and the City Engineer must review the final plat and must approve or deny the final plat based on findings of compliance with the following:

1. The final plat complies with the preliminary plat approved by the approval authority and all conditions of approval have been satisfied.
2. The preliminary plat has not lapsed.
3. The streets and roads for public use are dedicated without reservation or restriction other than revisionary rights upon vacation of any such street or road and easements for public utilities.
4. The plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal, and water supply systems.
5. All common improvements required as conditions of approval have been described and referenced on the plat, and where appropriate, instruments to be recorded have been submitted.
6. The plat complies with the Zoning Ordinance and other applicable ordinances and regulations.
7. Submission of signed deeds when access control strips are shown on the plat.
8. The plat contains an affidavit by the land surveyor who surveyed that the land represented on the plat was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92.060, and indicating the initial point of the survey, and giving the dimensions and kind of such monument, and its reference to some corner established by the U.S. Survey or giving two or more objects for identifying its location.

(Ord. 2219 § 2 (Exh. B), 2022; Ord. 2168 § 2, 2019; Ord. 2025 § 3, 2011; Ord. 2001 § 2, 2009; amended during Supp. No. 2; Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.28

DESIGN STANDARDS

17.28.010 CONFORMITY OF SUBDIVISION

Partitions and subdivisions must conform with any development plans of the City and must take into consideration any preliminary plans made in anticipation thereof and must conform with the requirements of state laws and with the standards established by the City.

17.28.020 PUBLIC FACILITY IMPROVEMENTS

All land divisions and boundary changes that increase the number of lots must be subject to the requirements and standards contained in Chapter 19.700 Public Facility Improvements and the Public Works Standards for improvements to streets, sidewalks, bicycle facilities, transit facilities, and public utilities.

17.28.030 EASEMENTS

A. Utility Lines

Easements for sewers, water mains, electric lines, or other public utilities must be dedicated wherever necessary. The easements must be provided in accordance with applicable design standards in the Public Works Standards.

B. Watercourses

If a subdivision is traversed by a watercourse such as a drainageway, channel, or stream, there must be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of the watercourse, and such further width as will be adequate for the purpose of construction and maintenance. Streets, parkways, bicycle ways, or pedestrian ways parallel to major watercourses may be required.

17.28.040 GENERAL LOT DESIGN

This section does not apply to units of land that are created for purposes other than land development including parks, natural areas, right-of-way dedications, or reservations of a similar nature. Lots and tracts created for cottage cluster housing development, per Subsection 19.505.4, are also exempt from the requirements of this section.

A. Size and Shape

Lot size, width, shape, and orientation must be appropriate for the location and the type of use contemplated. Minimum lot standards must conform to Title 19. Lot shape standards may be adjusted subject to Section 19.911 Variances.

B. Rectilinear Lots Required

Lot shape must be rectilinear, except where not practicable due to location along a street radius, or existing lot shape.

C. Limits on Compound Lot Line Segments

Cumulative lateral changes in direction of a side or rear lot line exceeding 20% of the distance between opposing lot corners along a given lot line may only be permitted through the variance provisions of MMC Subsection 19.911. Changes in direction must be measured from a straight line drawn between opposing lot corners.

D. Limits on Double and Reversed Frontage Lots

Double frontage and reversed frontage lots should be avoided, except where essential to provide separations of residential development from railroads, traffic arteries, or adjacent nonresidential uses, or to overcome specific disadvantages of topography and orientation.

E. Measurement of Required Frontage

Pursuant to the definition and development standards contained in Title 19 for frontage, required frontage must be measured along the street upon which the lot takes access. (

17.28.050 FLAG LOT AND BACK LOT DEVELOPMENT AND FUTURE ACCESS

Applicants for flag lot and back lot partitioning must show that access by means of a dedicated public street is not possible, by submitting an engineering analysis confirming that there is no opportunity for a public street, which must be reviewed and accepted by the City. This does not preclude the City from requiring public pedestrian/bicycle access in place of a public street. Consideration must be given to other inaccessible adjacent or nearby properties for which a jointly dedicated public right-of-way could provide suitable access and avoid other flag lots or back lots.

The creation of flag lots or back lots must not preclude the development of public access to surrounding properties. Where there is the potential for future development on adjacent lots with new roadway development, flag lots or back lots may be allowed as an interim measure. Dedication of the future public right-of-way is required as part of final plat approval.

17.28.060 FLAG LOT AND BACK LOT DESIGN STANDARDS

A. Consistency with the Zoning Ordinance

Flag lot and back lot design must be consistent with Subsection 19.504.8.

B. More than Two Flag Lots or Back Lots Prohibited

The division of any unit of land must not result in the creation of more than two flag lots or back lots within the boundaries of the original parent lot. Successive land divisions that result in more than two flag lots or back lots are prohibited.

17.28.070 FLAG LOTS AND BACK LOTS IN SUBDIVISIONS

Flag lots and back lots are permitted in new subdivisions.

17.28.080 PUBLIC OPEN SPACES

A. Due consideration must be given to the allocation of suitable areas for schools, parks, and playgrounds to be dedicated for public use.

B. Where a proposed park, playground or other public use shown in the Comprehensive Plan or master plan adopted by the City is located in whole or in part in a subdivision, the City may require the dedication or reservation of such area within the subdivision.

C. Where considered desirable by the City, and where the Comprehensive Plan or adopted master plan of the City does not indicate proposed public use area, the City may require the dedication or reservation of areas or sites of a character, extent, and location suitable for the development of parks and other public use.

D. If the applicant is required to reserve land area for park, playground, or other public use, such land must be acquired by the appropriate public agency within 18 months following plat approval, at a price agreed upon prior to approval of the plat, or such reservation must be released to the applicant.

E. New residential projects will require the dedication of land if the development corresponds to park locations defined in the Comprehensive Plan.

F. In exchange for the dedication of parkland, the allowable density on the remaining lands will be increased, so that the overall parcel density remains the same.

17.28.090 LAND DIVISION WITH LEFTOVER PARCEL OR LOT

A. Applicability. This provision applies to residential land division proposals where there is an existing dwelling unit(s) that will be on its own parcel or lot and the remaining property will be "leftover" in that it will require further land division to meet the minimum density standard for the underlying zone.

B. Conditions. An application for a land division may have a maximum of two leftover parcels or lots that are not included as part of a phased subdivision if the following conditions are met:

1. The original parcel or lot has an existing habitable dwelling unit(s) on it built on or before (date of adoption of this code).
2. The leftover parcel(s) or lot(s) must be capable of further development.
3. The proposed land division will not preclude ultimate buildout of the original parcel or lot per an adopted or submitted and approved Concept Plan, as applicable.
4. When a land division places a primary dwelling unit on a parcel or lot separate from an accessory structure or an accessory dwelling, the accessory structure or dwelling must be:

- a. Removed upon transfer of ownership of either parcel or lot; or
- b. An accessory dwelling must be converted to a conforming primary dwelling as part of the land division application.

C. Development of Leftover Parcels or Lots. Leftover parcels or lots created under this provision may not be developed until they are further divided into additional parcels or lots pursuant to this title, where applicable. Parcels or lots created from leftover parcels or lots must be consistent with the standards of the applicable provisions in Title 19, to ensure that the applicable minimum density standard is met.

D. Submittal Requirements. The following must be provided with submittal for the land division:

1. Payment-in-lieu of required future improvements along the existing street frontage(s) of the leftover parcel(s) or lot(s).
2. A deed restriction requiring removal of any applicable accessory structure or accessory dwelling unit upon transfer of ownership of either parcel or lot.
3. A concept plan that includes the following:
 - a. For single detached dwelling and middle housing development;
 - i. A plot plan showing a future platting of the leftover parcel(s) or lot(s) that meets minimum density.
 - ii. Access and street layout, as applicable.
 - iii. Plan sheet showing requirements of other applicable provisions of Title 17.
 - b. For all other uses, including but not limited to multi-unit, commercial, industrial, and mixed-use development:
 - i. A plot plan showing a future platting of the leftover parcel(s) or lot(s) that meets minimum density.
 - ii. Future uses.
 - iii. Building footprints.
 - iv. Parking areas.
 - v. Access and street layout (as applicable).
 - vi. Plan requirements of other applicable provisions of Title 17.

(Ord. 2218 § 2 (Exh. B), 2022; Ord. 2051 § 2, 2012; Ord. 2003 § 2, 2009; Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.32

IMPROVEMENTS

17.32.010 IMPROVEMENT PROCEDURES

In addition to other requirements, improvements installed by the applicant, either as a requirement of these regulations or their own option, must conform to the requirements of this title and to improvement standards and specifications in the Public Works Standards and Chapter 19.700 Public Facility Improvements. The improvements must be installed in accordance with the following procedure:

- A. Work must not begin until plans have been checked for adequacy and approved by the City in writing and a performance bond, as provided in Section 17.24.060, and certificate of insurance, as provided in the Public Works Standards, are provided to the City. All such plans, performance bond, and certificate of insurance, must be prepared in accordance with requirements of the City.
- B. Work must not begin until the City has been notified in advance, and if work is discontinued for any reason, it must not be resumed until the City is notified.
- C. Improvements must be constructed under the inspection and to the satisfaction of the City. The City may require changes in typical sections and details if unusual conditions arising during construction warrant such changes in the public interest.
- D. All underground utilities, installed in streets by the applicant, including but not limited to, water, sanitary sewers, and storm drains must be constructed prior to the surfacing of streets. Stubs for service connections must be extended to property lines long enough to avoid disturbing the street improvements when service connections are made. How utilities are to be serviced must be indicated.
- E. A map showing all public improvements as built must be filed with the City upon completion of the improvements. All such maps must be prepared in accordance with requirements of the City.

17.32.020 UTILITY UNDERGROUNDING

All utility lines, including, but not limited to, those required for electric, communication, lighting, cable television services, and related facilities must be placed underground. Surface-mounted transformers, surface-mounted connection boxes and meter cabinets, temporary utility service facilities during construction, high-capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above may be placed above ground. The applicant must make all necessary arrangements with the serving utility to provide the underground services.

17.32.030 GUARANTEE

All improvements installed by the applicant must be guaranteed as to workmanship and material for a period of 4 2 years following acceptance by the City. Such guarantee must be secured by cash deposit or maintenance warranty bond in the amount of the value of the improvements as set by the City Engineer. Said cash or bond must comply with the terms and conditions of Section 17.24.060.

(Ord. 2025 § 3, 2011; Ord. 2003 § 2, 2009; Ord. 1907 (Attach. 1), 2002)

CHAPTER 17.44

EXCEPTIONS AND VARIANCES**17.44.010 VARIANCE**

A variance of any provision of this title may only be granted in accordance with Section 19.911.

(Ord. 2025 § 3, 2011; Ord. 1907 (Attach. 1), 2002)

TITLE 19**ZONING****CHAPTER 900 LAND USE APPLICATIONS****19.901 INTRODUCTION**

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval for all required land use applications prior to establishment or construction. Table 19.901 below contains a complete list of the City's land use applications and the location of the provisions that govern their submittal, review, and approval. It also identifies the review type(s) associated with each application type. The review type determines who is given notice about land use and development proposals, when the City has to make a decision on a land use application, and who makes the final decision. Descriptions of the different review types and the procedures associated with them are located in Chapter 19.1000. Decision makers for each review type are listed in Table 19.1001.5.

Table 19.901**Land Use Applications**

Application Type	Municipal Code Location	Review Types
Land Divisions:	Title 17	
Final Plat	Title 17	I
Lot Consolidation	Title 17	I
Partition	Title 17	II
Property Line Adjustment	Title 17	I, II
Replat	Title 17	I, II, III

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Subdivision	Title 17	III-II
Middle Housing Land Division	Title 17	II

19.908 EXTENSIONS TO EXPIRING APPROVALS

19.908.1 Purpose

The purpose of this section is to provide for an appropriate and efficient review process for extending the time period during which land use approvals are valid and may be utilized.

19.908.2 Applicability

A. Approvals Eligible for Extensions

An extension may be requested for any unexpired land use application that was required by Titles 14, 17, or 19 of the Milwaukie Municipal Code and that was approved through a Type I, II, or III review.

B. Approvals Not Eligible for Extensions

An extension pursuant to this section may not be requested for an approved land use application that has expired or where other sections of the municipal code specifically prohibit or limit the length or number of extensions allowed.

19.908.3 Review Process

A. General Provisions

1. An extension application must be submitted and approved prior to the expiration date of the approval. An extension application may not be submitted more than 6 months in advance of an expiration date.
2. An extension may be approved up to a maximum of 2 years from the effective date of the extension approval. Additional extensions may be requested. There is no limit to the number of extensions that may be requested or approved. In the case of applications approved under Title 17, an application may be approved up to a maximum of 12 months and only 1 extension request is allowed.
3. If the original application was approved through a Type III review, the Planning Director shall notify the Planning Commission of receipt of an extension application at the same time that public notice is mailed for the application.

4. If an extension application is denied, the applicant may seek approval for the proposed development by resubmitting all applicable land use applications. Such applications are subject to all procedures, approval criteria, and development standards in effect at the time of submission.

CHAPTER 1000 REVIEW PROCEDURES

19.1001 GENERAL PROVISIONS

19.1001.7 Decisions

E. Expiration of Approved Decisions

1. Type I, II, III, and IV land use approvals granted pursuant to this chapter for land use applications submitted on or after May 14, 2011, the effective date of Ordinance #2025, shall expire and become void unless the following criteria are satisfied:

a. For proposals requiring any kind of development permit, the development must complete both of the following steps:

(1) Obtain and pay for all necessary development permits and start construction within 2 years of land use approval.

(2) Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval.

b. For proposals not requiring development permits, the development must utilize its approvals within 4 years of land use approval.

c. For boundary adjustments and land divisions approved under Title 17 Land Division, evidence of recording of the required instruments must be provided to the city within 2 years of the original approval.



CITY OF MILWAUKIE

To: Planning Commission
Through: Laura Weigel, Planning Manager
From: Brett Kelter, Senior Planner
Date: April 2, 2024, for April 9, 2022, Work Session
Subject: Natural resources update (Tree code coordination)

ACTION REQUESTED

None. Staff is briefing the Planning Commission on efforts to update the natural resources code and maps. This session is focused on coordination with the City's residential tree code.

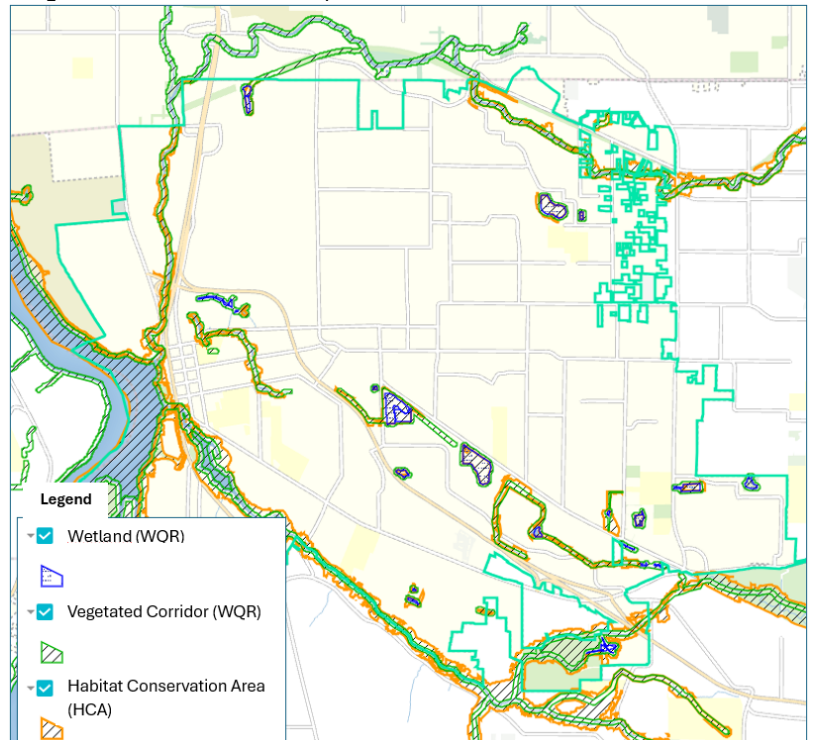
BACKGROUND INFORMATION

Natural resources are regulated by Milwaukie Municipal Code (MMC) Section 19.402, referred to as the natural resources code (NR code). Natural resources are distinguished as water quality resource (WQR) areas and habitat conservation areas (HCAs). (See Figure 1 for a high-level map of these natural resources in Milwaukie.)

Additional background on the NR code, including a more in-depth review of WQR and HCA resources and an explanation of various issues needing attention, is provided in Attachment 1. Staff has lined out a project to address those issues, with the goal of having amendments and updates adopted by the end of 2024. To bring the Planning Commission up to speed on the project, staff is proposing a short series of work sessions with the commission this spring and summer on the following topics:

1. Coordination with residential tree code (MMC Section 16.32.042)
2. WQR standards and other code fixes
3. NR mapping adjustments

Figure 1. Natural resources map



The April 9 work session will address the first of these three topic areas.

TOPIC 1 — COORDINATION WITH RESIDENTIAL TREE CODE

In May 2022, new regulations went into effect for trees on private property in residential zones, codified in MMC Section 16.32.042. With almost two years of experience with the “tree code,” the Urban Forestry team is currently in the process of making adjustments to clarify the rules and improve their enforceability. This presents an opportunity to better align the tree code and NR code.

Attachment 2 presents a more detailed explanation of the tree code, including a comparison of the NR code’s tree removal provisions.

Intersection of NR Code and Tree Code

The NR code and tree code have many areas of overlap but also several key differences.¹ Although most of Milwaukie’s land area is zoned residential, only a small portion is formally designated as a protected natural resource. There are many situations that are subject to only one of the two codes. However, whenever the NR code is triggered for tree removal in residential zones, it is likely that the tree code also applies—for those situations, it is important that the two codes align.

In development situations (as designated by the tree code²), the building permit review process incorporates the Urban Forester’s review with no separate permit. Any WQR or HCA tree removal will be addressed as part of the planning review and either deemed exempt or taken through the appropriate NR land use review. Having a development project address the minimum canopy standard and preserve and protect existing trees is consistent with the goals of the NR code.

Non-development situations are the ones with the greatest need for improved coordination. That part of the tree code, with its structure of exemptions and Type 1 and 2 tree permits, is most parallel to the general structure of the NR code’s tree protections. It is useful to compare the lists of exempt and administrative review allowances for tree removal to identify opportunities for improvement. Staff has done this (see Tables 2 and 3, respectively, in Attachment 2) and has identified the following recommendations for adjustment.

Exemptions

- **Invasive-species trees** – The NR code exempts the removal of up to three invasive trees per year, with no replanting required; removal of more than three invasive trees per year requires Type I NR review and one-for-one replanting. Currently, the tree code requires a Type 1 tree permit for the removal of invasive-species trees but no replanting, although the Tree Board and City Council are discussing whether to institute a replanting

¹ Table 1 in Attachment 2 provides a comparison of the tree removal requirements in the two codes.

² The development tree code applies when a new dwelling unit is established by increasing the building footprint.

requirement. The NR code's exemption of a limited level of invasive tree removal was intended to reduce roadblocks to this key step in restoration and enhancement.

Now that the tree code has introduced a review process for invasive trees in residential zones, if the City decides to introduce a replanting requirement in the tree code staff recommends eliminating the NR code exemption for removing three or fewer invasive trees and handling all invasive tree removal with Type I NR review and a one-for-one replanting requirement. If the tree code continues to not require replanting, staff recommends leaving the NR code as it is regarding invasive trees.

- **Emergencies** – Since the tree code requires a Type 1 tree permit (retroactive) and replanting for immediate emergencies, staff recommends shifting emergency tree removal in WQR/HCA areas to the NR code's Type I review list, which would apply in both residential and non-residential zones.
- **Natural resource management plans** – Staff recommended an adjustment to the tree code to add an exemption for tree removal in accordance with an approved natural resource management plan. Such plans require Type II NR review, including referral to the Urban Forester for comment, so the tree permit review seemed duplicative. However, the tree code's goal of protecting tree canopy is not completely aligned with the NR code's goals of restoration and enhancement, so the Urban Forestry team is reluctant to allow a complete waiver of tree code permitting for natural resource management projects. The Urban Forestry team has indicated a willingness to establish a Type 1 tree permit option for removal when the following conditions are present:
 - The removal is part of a natural resources plan approved under the Natural Resources code (MMC 19.402).
 - The tree is less than 12-in DBH (the current healthy tree allowance for Type 1 is less than 12 in).
 - The tree is not a Rare or Threatened species.
 - The tree will be replaced, or a mitigation fee will be paid.

Staff will coordinate with the Urban Forestry team to confirm this recommended change.

Administrative Review

- **NR review defers to tree permit process** – In residential zones, staff recommends having the Type I NR review process generally defer to the Type 1 tree permit process instead of requiring a separate, duplicative NR application. Similarly, for the removal of up to three healthy trees if they are not native species and not in a WQR area classified as "Good," staff recommends having the NR code defer to the Type 2 tree code permit process in residential zones. In either scenario, sites in non-residential zones would be subject to the Type I NR review process.
- **Replacement tree size and survival** – Staff recommends adjusting the size requirements for NR replacement trees to match those of the tree code (i.e., a minimum size of 1.5-in caliper or 5 ft tall). Ensuring that replanted trees within WQR and HCA areas have a chance to become established is important, so staff recommends that the NR code retain

the minimum two-year survival requirement where the tree code has none. Planning staff is already responsible for tracking survival in non-residential zones and can do the same for residential zones.

General Recommendations

In addition, staff recommends a few other minor adjustments:

- The NR code should reestablish the 6-in DBH threshold as the minimum size for tree protection. When the HCA regulations were added to the NR code in 2011, the definition of “tree” was updated to specify a minimum size of 6-in DBH. The 2019 tree code update adjusted the NR code’s definition of “tree” to match the tree code’s more general definition, which did not include a size threshold—instead, the tree code’s statements of applicability are what specified the 6-in DBH minimum. The NR code should do the same where appropriate.
- The NR code needs to reintroduce a reference to a plant list that includes native species. Previously, the code referenced the Milwaukie Native Plant List as a guide for mitigation and restoration efforts. When the new tree code was adopted, several key references in the NR code to the Milwaukie Native Plant List were replaced with references to the Oregon State Noxious Weed List. The state list does not include native species, so the change inadvertently removed important guidance for mitigation that needs to be re-established. Staff is researching to confirm the best options for referencing both native and invasive species.

CONCLUSION

Attachment 3 is a draft of the various proposed amendments to MMC 19.402. Staff is interested in fielding questions about either the NR code or tree code as well as hearing responses to the issues outlined in the report and attachments.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Public Copies	E-Packet
1. Background—Natural Resources	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Tree Code—Background and Comparison with Natural Resources Code	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Proposed adjustments to NR code (MMC 19.402)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

E-Packet = meeting packet materials available one week before the meeting, posted online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-117>.

Background—Natural Resources

Natural Resources Update Project 2024

Natural Resource Protections

Natural resources are identified as an overlay on the City’s zoning map, with regulations established in Milwaukie Municipal Code (MMC) Section 19.402. The rules seek to minimize adverse impacts to riparian, wildlife, and wetland resources, many of which have been negatively affected by development over time. The natural resources code (NR code) is also aimed at restoring and improving natural resources where possible, while balancing property rights and development needs of the city.

Natural resources are distinguished as water quality resource (WQR) areas and habitat conservation areas (HCAs).

WQRs include wetlands, rivers, lakes, streams, springs, and other landscape features with a watershed area of at least 50 acres, as well as a mapped vegetated corridor that buffers each protected water feature. The width of the vegetated corridor varies depending on the type of protected water feature, upstream drainage area served, and slope adjacent to the protected water feature. The WQR regulations were adopted in 2002 and are very protective, requiring all but a handful of restoration activities and maintenance of existing development in WQR areas to go through a discretionary review process.

HCAs include wetlands, riparian areas, and fish and wildlife habitat. HCAs were initially designated by Metro based on a combination of vegetative cover inventory and analysis of habitat value and urban development value. The HCA regulations were adopted in 2011 and were crafted to provide a clear and objective review option for residential development that allows some by-right disturbance of HCAs. Where there is overlap of WQR and HCA resources, the WQR regulations override because they understood to be more protective.

The City’s map serves as a general indicator of the WQR location; the specific WQR location must be determined in the field, usually by engaging a professional natural resource specialist who can find the top-of-bank location or work through the state’s wetland delineation process. For HCAs, the map shows the specific location and is understood to be correct unless demonstrated otherwise. Minor adjustments to HCA boundaries can be made with simple documentation of discrepancies between the map and on-the-ground conditions; more detailed verifications require a complete reassessment of the site using the methodology originally applied by Metro.

Comprehensive Plan Goals and Policies for Natural Resources

The Comprehensive Plan includes goals and policies related to natural resources, many of which are already being actualized in one way or another. They include the following:

- **Policy 3.1.4** – Periodically update the City’s inventory of wetlands, floodplains, fish and wildlife habitat and corridors, and other natural resources through both technology and in-field verification.

- **Policy 3.2.1** – Support programs and regulations to enhance and maintain the health and resilience of watersheds, riparian and upland zones, and floodplains.
- **Policy 3.2.4** – Require a detailed analysis, including alternatives, of how development will avoid impacts to natural resources. If impacts cannot be avoided, include a detailed analysis of how development will minimize and mitigate impacts to the natural resources.
- **Policy 3.2.6** – When considering development proposals, consider changes in water flow, quantity, and duration of flow associated with both development and climate change and evaluate the downstream impacts of development in upland areas.
- **Policy 3.3.4** – Protect and enhance riparian vegetation that provides habitat and improves water quality along creeks and streams through the use of best available science and management practices to promote beneficial ecosystem services, such as managing water temperature and providing woody debris for habitat.
- **Policy 3.3.5** – Require mitigation that restores ecological functions and addresses impacts to habitat connectivity as part of the development review process.
- **Policy 3.4.3** – Provide flexibility in the division of land, the siting and design of buildings, and design standards in an effort to preserve the ecological function of designated natural resources and environmentally sensitive areas and retain native vegetation and trees.
- **Policy 3.5.4** – Identify additional opportunities for partner agencies and environmental organizations to provide early feedback and recommendations on reducing environmental impacts associated with development.

There are other natural resource policies in the Comprehensive Plan, and for many of them the largest portion of work necessary for implementation will require the development of a more robust natural resources program beyond the current capacity and scope of the public works natural resources division. Such a program is not under the Planning Department’s purview and includes tasks such as the development of a wildlife/habitat connectivity plan, partnering with outside agencies to support natural resource protection, proactive stormwater management, and expanded tree and habitat protection and outreach related to climate-friendly and native species.

Issues with Current Code (MMC 19.402)

- **Code complexity** – One of the complicating aspects of MMC 19.402 is the need to manage two types of designated natural resources that are grounded in two different statewide planning goals (water quality and habitat). As a result, the NR code is not easy to navigate, internally or externally.
- **WQR standards** – The language of the WQR model code originally provided by Metro did not include many exemptions from review for WQR disturbance and did not establish a

clear and objective review path for needed housing. This is problematic, as a clear and objective path is required by the state for residential development.

- **Residential tree code** – In 2022, the City adopted regulations for trees on private property in residential zones (MMC Section 16.32.042), creating some overlap where residential properties have WQR or HCA resources. There is a resulting need to ensure that the rules for these two resource types are not in conflict and are consistent, including for tree removal in WQR/HCA areas on residential properties.
- **Other adjustments** – Since the introduction of the HCA rules in 2011, staff has developed a list of other specific NR code items that need adjustment based on evolving experience with the regulations. The current amendment effort offers an opportunity to address many of those issues, most of which are more housekeeping than policy change.

Issues with NR Mapping

- **Detailed verification of HCA boundaries** – As noted above, detailed verifications of HCA boundaries require a complete reassessment of the site using the methodology originally applied by Metro. The maps referenced in that methodology were not very detailed to begin with and have not been maintained or updated, so applicants and staff alike are at a loss when a detailed HCA verification is requested or proposed. A new, more accurate methodology for detailed HCA verifications must be developed.
- **Accuracy of wetland mapping** – For wetland areas, the map uses a combination of data from Metro and the state and national wetland inventories to show approximate locations, with limited accuracy except for wetlands that have been formally delineated. The current code is not clear about how close a proposed development can be to a wetland before a formal delineation is required (a process involving time and expense), which presents complications for development activities proposed on properties adjacent to wetlands. It would be useful to clarify this aspect of MMC 19.402 and to provide a more accurate identification of those wetlands that have not been delineated, particularly where adjacent to multiple surrounding lots that are impacted by the associated vegetated corridor.
- **Stormwater facilities as WQRs** – Stormwater facilities and retention areas—including natural wetlands, constructed wetlands or detention facilities, and “daylighted” storm pipes—present certain challenges with respect to natural resource protection. Some stormwater facilities are currently categorized as WQRs on the map while others are not. The code does not provide guidance about what triggers an assessment of whether a stormwater facility meets the definition of protected water feature. The map should consistently and accurately represent (or exclude, as appropriate) these various types of stormwater facilities for resource protection, based on a methodology that provides an appropriate level of protection.

Proposed amendments and updates

Staff has lined out a project to address the issues noted above, with the goal of having amendments and updates adopted by the end of 2024. The project scope does not include a

deeper dive into the issues associated with the forthcoming Environmental Impact Statement (EIS) being developed by the Federal Emergency Management Agency (FEMA) regarding integration of the Endangered Species Act into the National Flood Insurance Program. The EIS will likely require the City to reevaluate and update both Title 18 (Flood Hazard Regulations) and MMC 19.402, offering an opportunity to revisit the various Comprehensive Plan goals and policies related to both natural resource protection and flood hazard mitigation. That is for a future project—the current project is focused more on minor adjustments to make the existing natural resource protections function better.

Tree Code—Background and Comparison with Natural Resources Code

Natural Resources Update Project 2024

Milwaukie's Residential Tree Code

In May 2022, new regulations went into effect for trees on private property in residential zones. The new rules are a result of implementing the City's Urban Forest Management Plan, which was adopted in 2019. The regulations are codified in Milwaukie Municipal Code (MMC) Section 16.32.042 (the "tree code") and are overseen by the City's Urban Forester, with some involvement by the City's Tree Board.

The tree code regulates private residential trees in development and non-development situations.

Development Tree Code

The development tree code applies when a new dwelling unit is established by increasing the building footprint. Healthy trees that are at least 6 inches (6-in) in diameter at breast height (DBH), along with rare or threatened trees of any size, are required to be preserved unless the proposed development requires their removal (e.g., conflict with the building footprint, access, utilities, etc.). Invasive species trees and healthy non-rare trees less than 6-in DBH are not required to be preserved.

In conjunction with the City's goal of establishing 40% tree canopy in the community by 2040, residential development sites are required to provide a minimum of 40% tree canopy by either preserving existing healthy trees¹ or planting new trees.² Existing trees smaller than 6-in DBH do not count in the canopy calculation, nor do existing invasive species trees of any size. The development tree code also includes standards for tree protection and requirements for soil volume when planting new trees.

The Urban Forester determines compliance as part of the building permit review process. A complete inventory of existing trees is required from the applicant, including measures for tree protection and planting. If existing healthy trees are removed below 30% canopy coverage, the applicant must pay mitigation fees. Likewise, if the 40% canopy minimum cannot be met, an additional mitigation fee must be paid—\$5 per square foot of canopy as needed to hit the 40% minimum.

¹ Preserved trees count 100% of their existing or projected canopy at maturity according to the City's Tree Crown Area Reference List, whichever is greater. Larger preserved trees (12-in DBH and greater) receive additional canopy credit, from 125% up to 175% depending on the size.

² Newly planted trees count only 75% of their projected canopy at maturity. The discounting factor is based on an assumption that growing conditions will be less than ideal for the new trees to reach their full growth potential.

It is important to remember that the development tree code only applies in residential zones and only when at least one new dwelling unit is being established by expanding the building footprint. A home addition for a new bedroom or bathroom, conversion of existing floor area into an accessory dwelling unit, a new accessory structure, or other site work with earth disturbance (e.g., driveways, patios, decks, etc.) would not be reviewed under the development code—those situations would be subject to the non-development tree code, discussed below.

Non-development Tree Code

When the development tree code is not triggered, proposals to remove healthy trees in residential zones that are 6-in DBH or greater (or any size tree on the City's Rare or Threatened Tree list) require a permit for removal. The non-development tree code (currently codified as MMC Subsection 16.32.042.I but proposed to be renumbered as MMC Section 16.32.044) has a free Type 1 permit for the following tree removal situations:

- Dead or dying (confirmed by arborist)
- Damaged and will die or decline
- Adverse effect on adjacent infrastructure or buildings
- Unreasonable risk to occupants, property, or the public
- Noxious or invasive species
- Too large to remain in stormwater facility
- Street widening, construction, or extension
- Construction (building, utility, infrastructure)
- Fire risk
- Approved thinning (to 80% canopy)
- Healthy tree less than 12-in DBH (one per year)

Replanting on a one-for-one basis is required for these allowed removals, except for noxious/invasive species and thinning situations. There is currently some discussion among the Tree Board and City Council about adding the replanting requirement for noxious/invasive species while exempting dead/dying trees from the replanting requirement. A key consideration is balancing the cost to property owners with achieving the City's canopy goals.

There is a Type 2 tree permit that involves more discretion when the Type 1 circumstances cannot be met, with the number of replacement trees dependent on the size of the removed tree. Approval of either permit is a decision by the Urban Forester, though only the Type 2 permit allows for a formal appeal to the City Manager.³

³ Type 1 and 2 tree permits are not to be confused with Type I and Type II land use review. Tree permits are essentially administrative decisions, with no public notice or comment opportunity, like the Type I land use review process; Type II land use review includes public notice and comment, with the option to appeal to the Planning Commission.

Intersection with NR Code

The NR code and tree code have many areas of overlap but also several key differences. Table 1 compares the two codes, revealing similarities and variations in values and goals.

Table 1	
Comparison: Tree Removal in Tree Code & Natural Resources Code	
Tree Code (16.32.042 & .044)	Natural Resources Code (19.402)
Only applies in residential zones.	Applies in resource areas in all zones.
Different rules and review for development vs. non-development situations.	Development/non-development is not an issue— one set of rules, with level of review determined by scale of activity.
Canopy is paramount (40% goal).	Canopy is not a direct factor (comes into play for WQR classification).
Distinguishes healthy trees for protection from those that are dead/dying, in decline, or noxious/invasive species.	Indirectly acknowledges healthy trees by distinguishing from dead/dying and nuisance/invasive, but focuses more on natives.
Species matters (rare, invasive). <i>Invasives do not count for canopy but can remain.</i>	Species matters (native, invasive). <i>Invasives must be removed with development.</i>
Size matters (6-in DBH minimum for protection).	Size used to matter (was 6-in DBH minimum).
Not directly concerned with habitat or water quality—focused on retaining existing healthy trees.	Habitat and water quality are key—e.g., earth disturbance is discouraged, downed trees are encouraged to remain.
Emergencies (immediate) need retroactive permit. <i>Hazard/risk trees need Type 1 permit.</i>	Emergencies (immediate) are exempt. <i>Non-hazard emergencies need Type I review.</i>
Major pruning is not a concern for private trees.	Major pruning is limited in WQR/HCA.
Root protection is important, but earth disturbance is not a factor otherwise.	Earth disturbance is a factor in review type.
Replanted trees must be at least 1.5 inches in caliper (for broadleaf trees) or minimum 5 ft tall (for conifers); no minimum survival requirement.	Replacement trees must be at least 0.5 inches in caliper or 6 ft tall and must survive for at least 2 years.
Utilizes the Oregon State Noxious Weed List and Milwaukie Invasive Plant List.	Utilizes the same lists, but neither includes native species, which is critical for NR mitigation.
No fee for Type 1 permit application; \$50 fee for Type 2 permit application; fees for removal based on DBH (non-development) or in lieu of preservation (development); penalties for unpermitted removal.	No fee for Type I tree removal review.

Table 2 compares the exempt allowances for tree removal in the two codes.

Table 2	
Comparison: Exempt Tree Removal	
(no permit or review needed)	
Non-Development Tree Code (16.32.044.A) (no replanting requirement)	Natural Resources (19.402.4.A.6) (no replanting requirement)
Trees less than 6-in DBH (except Rare/Threatened trees ¹ or required trees)	—
	Downed trees (<150 sq ft of earth disturbance)
	Nuisance species (limit of 3 per year, <150 sq ft of earth disturbance)
	Emergency situations (immediate)
	As per approved natural resources mgmt plan
	Major pruning within 10 ft of structure

¹ The Urban Forest program has not yet developed the Rare and Threatened Tree List.

Summary of exemptions:

- Trees of any size, including trees less than 6-in DBH, are only exempt from NR review if they fit one of the particular situations outlined in the code ([MMC Subsection 19.402.4.A.6](#)).
- The tree code is not concerned with downed trees or major pruning, so there is no issue with the NR code exempting those situations.
- The tree code requires a Type 1 tree permit for removal of any number of nuisance or invasive species but does not require replanting. The NR code exempts the removal of up to three invasive trees per year (no replanting required) but requires a Type I NR review and replanting for removal beyond that.
- For immediate emergencies, the NR code has maintained an exemption because those situations were deemed too urgent to allow time for review, so no replanting is required. The tree code requires a Type 1 tree permit (retroactive) and replanting.
- Type II NR review is required to approve a natural resource management plan (such as for restoration or enhancement projects), which then allows related tree removal without the need for additional review. The tree code does not currently provide an exemption for these situations and would require a Type 1 tree permit.

Table 3 compares the administrative-review allowances for tree removal in the two codes.

Table 3	
Comparison: Tree Removal w/ Administrative Review	
Non-Development Tree Code (16.32.044.D) (1:1 replanting requirement) ¹	Natural Resources (19.402.6.A) (1:1 replanting requirement)
Dead or dying (<i>per certified arborist</i>)	Dead, diseased, or dying (<i>per certified arborist</i>)
Damaged and will die or decline	
Adverse effect on adjacent infrastructure/buildings	
Unreasonable risk to occupants/property/public	Non-emergency hazard
Noxious or invasive species	Nuisance species (<i>more than 3 per year, or if requiring >150 sq ft of earth disturbance</i>)
Too large to remain in stormwater system	
Street widening, construction, or extension	
Construction (building, utility, infrastructure)	
Fire risk	
Approved thinning (to 80% canopy)	
Healthy tree less than 12-in DBH (<i>1 per year</i>)	Non-nuisance, non-native, not in Good WQR (<i>limit of 3 per year</i>)
	Downed tree (<i>with >150 sq ft of earth disturbance</i>)
	Major pruning in general (<i>OK per certified arborist</i>)

¹ No replacement required if invasive species or if part of approved thinning. Replacement tree must substantively replace the function and values of the removed tree (where practicable). If replacement is not practicable, can pay a fee.

Summary of administrative review:

- There is significant overlap between the two codes' lists of situations that require administrative review. There may be opportunities to eliminate redundancies, particularly in situations where the tree permit could do the work of the NR review.
- Where the NR code requires Type I NR review for the removal of up to three healthy trees if they are not native species and not in a WQR area classified as "Good," the tree code would require a Type 2 tree permit.⁴
- For activities that are not of concern to the tree code, such as major pruning and removal of downed trees with significant earth disturbance, the Type I NR review process appears adequate.
- As noted in Table 1, there are some discrepancies in the size and survival expectation of replacement trees, with the NR code allowing a smaller caliper tree (but taller, if measured that way) and requiring two years of minimum survival.⁵

⁴ The Type 2 permit involves some discretion and a potentially greater replanting requirement, but it does not involve the Type II land use process, just a more involved review by the Urban Forester.

⁵ There is a bonding requirement for survival with the development tree code, but the non-development tree code does not provide a survival requirement.

Attachment 3

Proposed Tree Removal Adjustments to NR Code

19.402.4 Exempt Activities

A. Outright Exemptions

The following activities in WQRs or HCAs are exempt from the provisions of Section 19.402:

- 6. Removal of trees under any of the following circumstances:
 - a. The tree is a "downed tree" as defined in Section 19.201, the tree has been downed by natural causes, and no more than 150 sq ft of earth disturbance will occur in the process of removing the tree.
 - ~~b. The tree is categorized as a nuisance species on the Oregon Noxious Weed List or Milwaukie Invasive Tree List, no more than 3 such trees will be removed from one property during any 12-month period, the requirements in Chapter 16.32 are met, and no more than 150 sq ft of earth disturbance will occur in the process of removing the tree(s).~~
 - ~~c. The tree presents an emergency situation with immediate danger to persons or property, as described in Subsection 19.402.4.A.3. Emergency situations may include, but are not limited to, situations in which a tree or portion of a tree has been compromised and has damaged, or is damaging, structures or utilities on private or public property, or where a tree or portion of a tree is prohibiting safe passage in the public right-of-way. Examples are trees that have fallen into or against a house or other occupied building, or trees downed across power lines or roadways. This exemption is limited to removal of the tree or portion of the tree as necessary to eliminate the hazard. Any damage or impacts to the designated natural resource shall be repaired after the emergency has been resolved. The requirements in Chapter 16.32 must also be met.~~
 - ~~b. The tree is less than 6-in diameter at breast height (DBH), is not a species on the Milwaukie Rare or Threatened Tree List, and was not planted to meet any requirements in Sections 16.32.042 or 16.32.044.~~
 - ~~cd. Removal of the tree is in accordance with the requirements in Chapter 16.32 and an approved natural resource management plan per Subsection 19.402.10.~~
 - ~~de. Major pruning of trees within 10 ft of existing structures in accordance with the requirements in Chapter 16.32.~~

Commented [BK1]: The tree code is not concerned with downed trees, so no conflict here.

Commented [BK2]: If the tree code begins requiring replanting for invasive tree removal, consider moving this to the Type I list, since the non-development tree code will require a Type 1 permit for a single nuisance tree 6-in DBH or greater anyway (for residential zones). Otherwise, leave this as is.

For non-residential situations, we could consider leaving this exemption if the tree code begins to require replanting for invasive removal, but it would be more consistent with the tree code (and its potential future expansion to non-residential zones) to require Type I review and replanting. The review is free, and it would be good to get replanting in non-residential zones, where trees may have been a little more neglected or harder hit by development (e.g., lower landscaping requirements).

Commented [BK3]: In residential zones, the non-development code handles emergencies with a retroactive permit and requires replanting, so we can defer to that process for some situations. For non-residential zones, it seems consistent with the tree code principles to use a Type I administrative review retroactively to process an emergency removal and get replanting.

Commented [BK4]: Instead of changing the Title 19 definition of tree, we can adjust this to clarify the same threshold for review as the tree code.

Note: Prior to the tree code update, the zoning code defined "tree" as 6-in DBH or larger. With the tree code change, the NR code was suddenly applicable to any size tree—this would bring it back to how it was before.

Commented [BK5]: The proposal is to leave this as an exemption and adjust the tree code to allow a Type 1 permit for trees that are included in a natural resource management plan, less than 12-in DBH, not Rare or Threatened species, and will be replaced or mitigated with a fee.

Commented [BK6]: The tree code is not concerned with major pruning, so no conflict here.

19.402.6 Activities Requiring Type I Review

Within either WQRs or HCAs, the following activities and items are subject to Type I review per Section 19.1004:

A. Limited Tree Removal

1. The Planning Manager may approve an application for limited tree removal or major pruning within WQRs and HCAs when the applicable requirements in Chapter 16.32 are met, except where exempted by Subsection 19.402.6.A.2, under any of the following circumstances:

~~c. The tree removal is necessary to eliminate a hazardous, nonemergency situation, as determined by the Planning Manager. The tree poses an immediate emergency or a hazardous but nonemergency situation, with an unreasonable risk to the occupants of the property, the adjacent property, or the general public, as determined by an ISA Certified Arborist in accordance with current ISA tree risk assessment standards.~~

Immediate emergencies may include, but are not limited to, situations in which a tree or portion of a tree has been compromised and has damaged or is damaging structures or utilities on private or public property, or where a tree or portion of a tree is prohibiting safe passage in the public right-of-way. Examples include but are not limited to trees that have fallen into or against a house or other occupied building, or trees downed across power lines or roadways. Emergency situations do not offer time for the normal review process and will be evaluated retroactively once the emergency has been resolved.

A situation may be deemed hazardous ~~but a nonemergency~~ if a tree, or portion of a tree, has undergone a recent change in health or condition in a manner that may pose a danger to people, to structures on private property, to public or private utilities, or to travel on private property or in the public right-of-way. Examples of imminent hazards ~~may include,~~ but are not limited to, trees that are broken, split, cracked, uprooted, or otherwise in danger of collapse.

Approval ~~shall will~~ be limited to removal of the tree, or portion of the tree, as necessary to eliminate the emergency or hazard. Any damage or impacts to the designated natural resource must be repaired after the emergency or hazard has been resolved. Any applicable requirements of Chapter 16.32 must also be met.

b. The tree is dead, diseased, or dying and cannot be saved, as determined and documented in a report by a certified arborist.

~~c. The proposal would remove more than 3 trees during any 12-month period that are is~~ categorized as an invasive nuisance species on the Oregon Noxious Weed List or Milwaukie Invasive Tree List.

d. The tree is a downed tree, but more than 150 sq ft of earth disturbance is necessary to remove it.

~~e. The tree is a nuisance species, but more than 150 sq ft of earth disturbance is necessary to remove it.~~

f. The tree is not categorized as ~~either a nuisance or native species~~ on the Oregon Noxious Weed List or Milwaukie Invasive Tree Native Plant List and is

Commented [BK7]: This change is recommended only if the tree code begins requiring replanting for any number of invasive trees (see note on previous page).

Commented [BK8]: Same as note above—only change this if the tree code begins requiring replanting for removal of invasive trees.

not located in a WQR categorized as Class A ("Good"), according to Table 19.402.11.C, provided that no more than three (3) such trees will be removed during any 12-month period, and the removal complies with the applicable requirements in Chapter 16.32.

- g. For major pruning, as defined in Section 19.201, a certified arborist has determined, and documented in a report, that the tree will survive the proposed pruning.
2. The provisions of Subsection 19.402.6.A.1 do not apply to tree removal proposed in association with development or other activities regulated by Section 19.402, for which other approval criteria and mitigation standards may apply.
3. The Planning Manager shall will require the application to comply with all of the following standards:
 - a. A construction management plan shall must be prepared in accordance with Subsection 19.402.9. When earth disturbance is necessary for the approved removal or pruning, all open soil areas that result from the disturbance shall must be replanted and/or protected from erosion.
 - b. All pruning and/or tree removal shall must be done in accordance with the standards of the International Society of Arboriculture (ISA) and complies with the applicable requirements in Chapter 16.32.
 - c. Any tree that is removed in accordance with Subsection 19.402.6.A shall must be replaced with a new tree, of at least 1.5-in caliper or at least 65-ft overall height after planting. For purposes of Section 19.402, An exception to this requirement may be granted if the applicant demonstrates that a replacement tree has already been planted, in anticipation of tree removal, or if the existing site conditions otherwise preclude tree replacement (due to existing dense canopy coverage or other ecological reasons). Replanting requirements for tree removal subject to Chapter 16.32 may still apply.
 - d. The replacement tree(s) shall must be located in the general vicinity of the removed tree(s), somewhere within the designated natural resource (WQR or HCA). The replacement tree(s) does not have to be a native species; but, in accordance with Subsection 19.402.5.C, the replacement tree(s) shall must not be categorized as a nuisance species on the Oregon Noxious Weed List or Milwaukie Invasive Tree List. The property owner shall must ensure that the replacement tree(s) survives at least two (2) years beyond the date of its planting.

Commented [BK9]: The NR code may make an exception for tree replacement, but Chapter 16.32 still applies.

Commented [BK10]: Since the non-development tree code does not appear to have a minimum survival requirement, the NR code can stick with the 2-year minimum, unless there's some reason to adjust it upwards (maybe to 3 years, but definitely not less than 2 years).