

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE NUMBER 1438 BY ADDING ADULT ENTERTAINMENT PROVISIONS, ADOPTING STANDARDS FOR CONDITIONAL USES, RESTRICTING CERTAIN COMMERCIAL USES AND DECLARING AN EMERGENCY.

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Findings.

- A. Currently, Ordinance No. 1438 does not distinguish between adult entertainment businesses and other commercial uses, which are permitted outright in commercial zones and as conditional uses in certain industrial zones.
- B. The city has received testimony from city residents that adult entertainment businesses are not compatible with residential, church, public park and school uses.
- C. Experience in other communities has shown that the concentration of adult businesses contributes to blight and deterioration in commercial and residential areas.
- D. The City of Portland has documented complaints concerning existing adult entertainment businesses showing that these uses adversely affect the quality and stability of nearby residential and commercial areas and it is likely that the same effects would be experienced in Milwaukie if such businesses located here.
- E. It is in the best interest of the city to mitigate the adverse impacts of adult entertainment businesses by separating them from each other and from surrounding residential, church, public park and school uses and by excluding them from commercial areas.
- F. These uses can be adequately separated by prohibiting adult entertainment businesses with 400 feet of a residential zone, church, public park or school and within 500 feet of another adult entertainment business.
- G. Because many commercial uses often are incompatible with other surrounding commercial and industrial uses, it is desirable to restrict the location of certain commercial uses through the conditional use process.

- H. The current procedures for consideration of conditional use applications are not adequate. Clearer standards should be adopted and all high impact commercial uses should be subject to the conditional use requirements.
- I. The proposed regulation supports the following elements of the city's Comprehensive Plan, Ordinance No. 1437:
1. Community Conservation and Development Division, Objective #4, Neighborhood Conservation, page 30.  
To maximize the opportunities to preserve, enhance and reinforce the identity, pride of existing well defined neighborhoods in order to encourage the long-term maintenance of the city's housing stock.
  2. Economic Base and Industrial/Commercial Land Use Element, Objective #1, Economic Development, page 35.  
The city will encourage an increase in the overall economic development activity within the city.
  3. Economic Base and Industrial/Commercial Land Use Element, Objective #8, Commercial Land Use: Convenience Centers, page 38(a).  
To limit intrusion of commercial uses into neighborhood areas, while providing easy accessibility for residents.
  4. Recreational Needs Element, Objective #4. Neighborhood and District Parks, page 45.  
To develop a city-wide park and recreation system which meets the needs of neighborhoods and the city as a whole.
  5. Neighborhood Area 1, Objective #1 - Single Family Character, page 54.  
To maintain the single family character of designated single family areas by encouraging maintenance and rehabilitation of older structures, and by improving the quality of new residential development.
  6. Transportation Element, Objective #8 - Pedestrian/Bikeway, page 72.  
To develop a pedestrian/bikeway system which connects local activity centers such as parks, schools and activity centers.

7. Economic Base and Industrial/Commercial Land Use Element: Goal, page 34.  
To continue support and encourage the development of a broad industrial base in the city, and to encourage the expansion of service facilities in the community.
8. Objective #4 - Industrial Land Use, Policy 1, page 36.  
New industrial uses will be confined to the three major industrial areas in the city: Milwaukie Industrial Park, Omark Industrial area, and the Johnson Creek Industrial area, as shown on Figure 6.
9. Objective #9 - Downtown Office Center, Policy 1, page 39.  
Downtown Milwaukie will be considered a district commercial center, serving primarily the needs of nearby neighborhood residents.

Section 2. Definitions. Section 1.03 of Ordinance No. 1438 is amended by adding the following definitions in appropriate alphabetical order:

"Adult entertainment business" means an establishment which, for any form of consideration, provides or exhibits primarily products or performances characterized by an emphasis on the depiction or description of specified anatomical areas or specified sexual activities. "Adult entertainment business" includes, but is not limited to, adult arcades, adult bookstores, adult clubs, adult bars, adult motels or hotels and adult theaters.

"Church" means a structure used by a religious organization having a tax-exempt status.

"High-impact commercial businesses" means any such use that generates substantial traffic, or noise, or light, or irregular hours, or other negative impact on the community. Examples include, but are not limited to: drinking establishments, commercial recreation, adult entertainment businesses, theaters, hotels and motels.

"Public park" means a park, playground, swimming pool, reservoir, or athletic field within the city which is under the control, operation or management of the Milwaukie Community Services Department.

"Specified anatomical areas" means and includes any of the following:

- a. Less than completely and opaquely covered human genitals, pubic region, buttock, anus or female breast below a point immediately above the top of the areola; or
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified sexual activities" means and includes any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast;
- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- c. Masturbation, actual or simulated; or
- d. Excretory functions as part of or in connection with any of the activities set forth in (a) through (c) of this definition.

Section 3. Prohibited Uses. Sections 3.08 and 3.09 of Ordinance No. 1438 are amended by adding at the end:

- 4. Prohibited Uses. The following uses and their accessory uses are prohibited:
  - a. Adult entertainment business.

Section 4. Commercial Uses. Sections 3.10, 3.11 and 3.12 of Ordinance No. 1438 are amended as follows and renumbered accordingly:

Section 3.10 Limited Commercial Zone, C-L  
Delete from 3.10.2:

- d. Commercial recreation and motion picture theater, not including a drive-in theater.
- f. Eating or drinking establishment.
- g. Hotel or motel.

Add to 3.10.2:

High-Impact Commercial, except Adult Entertainment Businesses

Add at end:

4. Prohibited Uses. The following uses and their accessory uses are prohibited:

a. Adult entertainment businesses.

Section 3.11 Central Commercial Zone, C-C.  
Delete from 3.11.1:

i. Motion picture theater, not including a drive-in.

Delete from 3.11.2:

c. Commercial recreation.

f. Hotel and motel.

n. Drinking establishment.

Add to 3.11.2:

High-Impact Commercial, except Adult Entertainment Businesses.

Add at end:

4. Prohibited Uses. The following uses and their accessory uses are prohibited:

a. Adult entertainment business.

Section 3.12 General Commercial Zone, C-G.  
Delete from 3.12.1:

g. Commercial recreation and motion picture theater.

i. Hotel or motel.

v. Drive-in theater.

Add to 3.12.2:

High-Impact Commercial, except Adult Entertainment Businesses.

Any other uses similar to the above, and not listed elsewhere.

Add at end:

4. Prohibited Uses. The following uses and their accessory uses are prohibited:

a. Adult entertainment business.

Section 5. Industrial Uses. Sections 3.13 and 3.14 of Ordinance No. 1438 are amended to read as follows:

Section 3.13 Limited Manufacturing/Industrial Zone, M-L.

1. USES PERMITTED OUTRIGHT ARE LIMITED TO Industrial Uses which meet the following criteria:
- A. A use which involves the collection and assembly of small durable goods, small trans-shipment of goods from other sources, and/or the assembly of goods from products which have been primarily processed elsewhere.
  - B. Conforms with the Special Industrial Design Standards.
  - C. May produce small amounts of noise, dust, vibration or glare, but may not produce a nuisance at the property line.
  - D. Has access to a collector or arterial street.
  - E. A permitted use may require limited outside storage areas. These storage areas shall be screened from any adjoining residential uses, or public streets.
  - F. No single building may contain more than 40,000 sq. ft. of floor space on a single floor.
  - G. Example of a Light-Industrial Use may include:  
Small scale warehousing and wholesale distribution; facilities for the manufacturing, assembling and processing of small scale durable goods; machine shops; administrative offices associated with the Light-Industrial Use, and other similar uses.

H. Prohibited uses:

Any use which has a primary function of storing, utilizing or manufacturing explosive materials or other hazardous material is prohibited.

- I. The Planning Director will review each application to establish a new use in a Limited Manufacturing/Industrial Zone, and will allow the new use, if the Director finds that it meets the provisions of Criteria A through I of this Section, and all other appropriate provisions of this ordinance.

2. GENERAL AND SPECIAL DESIGN STANDARDS

General and Special Design Standards shall be applied to all permitted uses when they are applicable.

3. PLANNING COMMISSION REVIEW

If the Planning Director has any question regarding the applicant's ability to meet the criteria (A-I), the request may be scheduled for review by the Planning Commission.

4. CONDITIONAL USES

- A. Limited Commercial Uses that provide supporting activities for Limited Manufacturing/Industrial Uses. Examples of these activities include:  
A copy center; sandwich-deli shop; secretarial services; or trade school.
- B. High-Impact Commercial Uses.

5. STANDARDS

In the M-L Zone the following Standards shall apply unless modified by a Special Design Standard, which applies in a particular case.

6. SETBACKS (WHEN APPLICABLE)

- A. FRONT YARD SETBACK:  
The front yard setback shall be the same as for the adjoining buildings, where such buildings exist. Where no such buildings exist, the setback shall be twenty (20) feet.

B. SIDE YARD SETBACK:

None except property abutting a residential or apartment district, in which case the yard on the adjacent side shall have the same setback as the abutting property. On a corner lot the side abutting the street will equal the front yard setback.

C. REAR YARD SETBACK:

None, except property abutting a residential or apartment district, in which case the rear yard shall have the same setback as the abutting property.

7. LOT COVERAGE

The maximum lot coverage shall be seventy-five (75%) percent.

8. FLOOR TO AREA RATIO

The Floor to Area Ratio (FAR) shall not exceed 2:1.

9. HEIGHT LIMIT

The maximum height for a building shall be forty-eight (48) feet, with provision for Solar Access, which shall not restrict a building to less than thirty (30) feet.

10. OFF-STREET PARKING

Off-Street Parking shall be provided as required in Section 5.

11. LANDSCAPING

A minimum of fifteen (15%) percent of the site area must be landscaped. Street trees shall be planted. Landscaping and screening shall be provided on each site, to meet the following requirements:

A. All areas of the site not occupied by paved roadways, walkways, patios or buildings shall be landscaped with ground cover, shrubs, and decorative or ornamental trees.

B. It shall be the owner's responsibility to maintain the landscaping installed on the site.

C. Screen planting, masonry walls or fencing shall be provided to screen objectionable view within five (5) months of occupancy of



a related building. Views to be screened include garbage and trash collection stations and other similar uses.

12. SITE ACCESS (WHEN APPLICABLE)

No more than one forty-five (45) foot wide maximum curb-cut driveway per one hundred fifty (150) feet of street frontage, or fraction thereof, shall be permitted per site.

13. ACCESS TO PUBLIC STREETS

All developments shall have access to public streets.

14. ADULT ENTERTAINMENT BUSINESS: The proposed location of an adult entertainment business shall not be within 500 feet of an existing or previously approved adult entertainment business or within 400 feet of either a public park, a church, a day care center, a primary, elementary, junior high or high school or any residentially zoned property, both of which distances shall be measured in a straight line, without regard to intervening structures, between the closest structural wall of the adult entertainment business and either the closest property line of the impacted property or the closest structural wall of any pre-existing or previously approved adult entertainment business.

Section 3.14 General Manufacturing/Industrial Zone, M -G

1. USES PERMITTED OUTRIGHT ARE LIMITED TO:

Industrial Uses which meet the following criteria:

- A. A use which involves the primary or secondary processing of materials; the collection, assembly and processing of durable goods; warehousing, cold storage and transshipment of goods from other sources.
- B. Proper safety precautions shall be provided as part of any use which uses, stores or manufactured goods of an explosive or hazardous nature. Proof of these precautions shall be submitted along with a performance bond which is adequate to insure their installation.

- C. Conforms with the Special Design Standards.
- D. May produce noise, odor, dust, glare, vibration or smoke, but this shall not exceed the standards set by this ordinance at the property line and shall not cause a nuisance at the property line.
- E. Must have access to a collector or arterial street.
- F. A permitted use may have outside storage of material. However, allowed outside storage, with the exception of a sales display area, shall be screened with a sight-obscuring fence or hedge.
- G. Example of a General Manufacturing Use may include:  
Large scale warehouses; trucking terminals; vehicle assembly plants; tool plants; industrial equipment sales and service; small foundaries or casting plants; large metal working plants and other similar uses.
- H. The Planning Director will review each request to establish a new use in a General Manufacturing/Industrial Zone, and will allow the new use, if the Director finds that it meets the provisions of Criteria A through G, of this Section, and all other appropriate provisions of this ordinance.

## 2. GENERAL AND SPECIAL DESIGN STANDARDS

General and Special Design Standards shall be applied to all permitted uses when they are applicable.

## 3. PLANNING COMMISSION REVIEW

If the Planning Director has any question regarding the applicant's ability to meet the criteria (A-G), the request may be scheduled for review by the Planning Commission.

## 4. CONDITIONAL USE

- A. Limited Commercial Uses that provide supporting activities for General Manufacturing/Industrial Uses. Examples of these activities include: a copy center; sandwich-deli shop; secretarial services; or trade school.
- B. High-Impact Commercial Uses.

## 5. STANDARDS

In the M-G Zone the following Standards shall apply unless modified by a Special Design Standard, which applies in a particular case.

## 6. SETBACKS (WHEN APPLICABLE)

## A. FRONT YARD SETBACK:

The front yard setback shall be the same as for the adjoining buildings, where such buildings exist. Where no such buildings exist, the setback shall be twenty (20) feet.

## B. SIDE YARD SETBACK:

None, except property abutting a residential or apartment district, in which case the yard on the adjacent side shall have the same setback as the abutting property. On a corner lot the side abutting the street will equal the front yard setback.

## C. REAR YARD SETBACK:

None, except property abutting a residential or apartment district, in which case the rear yard shall have the same setback as the abutting property.

## 7. LOT COVERAGE

The maximum lot coverage shall not exceed eighty-five (85%) percent.

## 8. Floor to Area Ratio

The Floor to Area Ratio (FAR) shall not exceed 2:1.

## 9. HEIGHT LIMIT

The maximum height for a building shall be forty-eight (48) feet with provision for solar access, which shall not restrict a building to less than thirty (30) feet.

## 10. OFF-STREET PARKING:

Off-Street Parking shall be provided as required in Section 5.

## 11. LANDSCAPING

A minimum of ten (10%) percent of the site area must be landscaped. Street trees shall be planted. In addition, landscaping and screening will be provided on each site, to meet the following requirements:

- A. All areas of the site not occupied by paved roadway, walkways, patios or buildings shall be landscaped with ground cover, shrubs and decorative or ornamental trees.
- B. It shall be the owner's responsibility to maintain the landscaping installed on the site.
- C. Screen planting, masonry walls or fencing shall be provided to screen objectionable view within five (5) months of occupancy of a related building. Views to be screened include garbage and trash collection stations and other similar uses.

## 12. SITE ACCESS (WHEN APPLICABLE)

No more than one, forty-five (45) foot wide maximum curb-cut driveway per one hundred fifty (150) feet of street frontage, or fraction thereof, shall be permitted per site.

## 13. ACCESS TO PUBLIC STREETS

All developments shall have access to public streets.

14. ADULT ENTERTAINMENT BUSINESS: The proposed location of an adult entertainment business shall not be within 500 feet of an existing or previously approved adult entertainment business or within 400 feet of either a public park, a church, a day care center, a primary, elementary, junior high or high school or any residentially zoned property, both of which distances shall be measured in a straight line, without regard to intervening structures, between the closest structural wall of the adult entertainment business and either the closest property line of the impacted property or the closest structural wall of any pre-existing or previously approved adult entertainment business.

Section 6. Conditional Use. Section 6 of Ordinance No. 1438 is amended to read as follows:

Section 6. Conditional Use  
Substitute for existing 6.01:

Section 6.01 - AUTHORIZATION TO GRANT OR DENY CONDITIONAL USES

All applications for Conditional Uses shall be evaluated by the Planning Commission at a public hearing, under the specific criteria listed in Section 6.01 through Section 6.03. The Planning Commission may approve or deny the application. If the decision is to approve, the Planning Commission may impose any conditions deemed necessary to protect the public health, safety or general welfare from potentially deleterious effects resulting from approval of the permit, or to fulfill the public need for services created by approval of the request.

Approval of a Conditional Use shall not constitute a change of zoning classification and shall be granted only for the specific use requested subject to such modifications, conditions and restrictions as may be deemed appropriate by the Planning Commission, or as specifically provided herein.

1. EXISTING USE:

In the case of a use existing prior to the effective date of this ordinance and now classified as a Conditional Use, any alterations, including but not limited to: Change in use, lot area, or alteration of structure shall come before the Planning Commission to assure conformance with all current requirements for such a Conditional Use.

2. APPLICANT'S RESPONSIBILITIES:

At the public hearing the Applicant shall provide evidence that all requirements of this ordinance relative to the proposed use are satisfied, and demonstrate that the proposed use also satisfies the following criteria:

- A. The use meets the requirements of a Conditional Use in the zone currently applied to the site.
- B. The use meets the standards for the underlying zone.
- C. The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use.

- D. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.
- E. The proposed use is timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use.

3. CONDITIONS:

The Planning Commission may attach conditions and restrictions to any Conditional Use approved. The setbacks and limitations of the underlying district shall be applied to the Conditional Use, unless specifically varied by the Commission. Conditions and restrictions may include a specific limitation of uses, landscaping requirements, off-street parking, performance standards, performance bonds and other conditions, restrictions, or safeguards that would uphold the intent of the Comprehensive Plan and mitigate any adverse effect upon adjoining properties which may result by reason of a Conditional Use being allowed.

4. CONDITIONAL USE PERMIT:

When a Conditional Use Permit is approved by the Planning Commission, a written permit will be issued to the applicant, in the form of a letter from the Planning Staff, prior to development of the use. The permit shall stipulate any modifications, conditions, and restrictions imposed by the Planning Commission, in addition to those specifically set forth in this ordinance. A "Notice of Conditions" will be recorded with the County Clerk in the Deed files. These conditions may be changed after the granting of a permit only by mutual agreement of the Planning Commission and the permit holder. A Conditional Use Permit runs with the land and is not affected by a change of ownership.

- A. The permit shall become void if construction has not begun within six months, or a request been made for a time extension.
- B. The Planning Commission may, upon receiving a written request from the applicant, extend the Conditional Use Permit for a period not to exceed one year.

## 5. RECONSIDERATION OF A CONDITIONAL USE PERMIT:

Approved Conditional Uses shall be reconsidered by the Planning Commission at a public hearing, after a complaint has been received by the Planning Staff, provided the following criteria have been met:

- A. The complaint(s) must be in writing, signed by the complainant, and the required fee must be paid.
- B. The complaint(s) must address one of the following:
  - 1. Violations of the standards listed in the Comprehensive Plan or implementing ordinances for the use involved;
  - 2. Failure to satisfy a condition or restriction imposed on the specific use when approval was granted;
  - 3. Incidents which have occurred as a direct result of the conditional use that are detrimental to the health, safety, property or general welfare of the public.

Reconsideration of a Conditional Use Permit may result in suspension or revocation of the approval under Section 6.01.6.

## 6. SUSPENSION OR REVOCATION OF A PERMIT:

A Conditional Use Permit may be suspended or revoked by the Planning Commission when any condition or restriction imposed is not satisfied.

- A. A Conditional Use Permit shall be suspended only after a hearing before the Planning Commission. Written notice of the hearing shall be given to the permit holder by certified mail at least ten (10) working days prior to the hearing.
- B. A suspended permit may be reinstated when, in the judgment of the Planning Commission, the conditions or restrictions imposed on the approval have been satisfied within a time frame set by the Planning Commission.
- C. A revoked permit shall not be reinstated. A new application must be made to the Planning Commission, and a public hearing held.

7. REVIEW OF A CONDITIONAL USE PERMIT UPON CHANGE IN OWNERSHIP, USE OR TENANT:

Upon first learning of the change in ownership, use or tenant, the Director shall conduct an Administrative Review of the status of the Conditional Use Permit. If the Director finds that the conditions attached to the Permit have not been met, the Director shall notify the new owner or tenant of the conditions and/or restrictions. If the Director deems it necessary to achieve compliance, a hearing before the Planning Commission may be scheduled to consider suspension or revocation of the Conditional Use Permit, in accordance with Section 6.01.6.

Substitute for existing 6.02.12:

12. HIGH-IMPACT COMMERCIAL USE:

In considering a Conditional Use application for a High-Impact Commercial Use the Planning Commission shall consider the following:

- A. Nearness to dwellings, churches, hospitals or other uses which require a quiet environment.
- B. Building entrances, lighting, exterior signs, and other features which could generate or be conducive to noise or other disturbance for adjoining uses.
- C. Parking vehicle and pedestrian access and circulation could contribute to noise or attract habitual assembly or unruly persons.
- D. Hours of operation.
- E. In addition to consideration of the above with respect to building and site design, the Planning Commission may attach conditions or standards of performance and impact, and methods for monitoring and evaluating these, to insure that such establishments do not become unduly or unnecessarily disruptive.




Section 7. Emergency. Because this ordinance is necessary for the immediate preservation of the safety, health, welfare and morals of the citizens of the city, an emergency is hereby declared and this ordinance shall be effective immediately upon the passage by the Council.

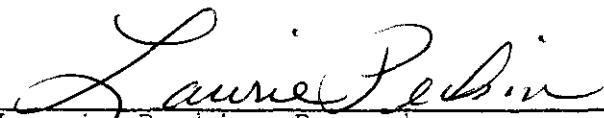
Read the first time on July 19, 1983 and moved to second reading by Majority vote of the City Council.

Read the second time and adopted by the City Council on August 2, 1983.


Signed by the Mayor on August 2, 1983.

  
Joy Burgess, Mayor

ATTEST:

  
Laurie Perkin, Recorder

Approved as to form:

  
Greg Eades, City Attorney