

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, November 9, 2010
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Nick Harris, Vice Chair
Lisa Batey
Chris Wilson
Mark Gamba

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Ryan Marquardt, Associate Planner
Zach Weigel, Civil Engineer
Damien Hall, City Attorney

COMMISSIONERS ABSENT

Scott Churchill

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:33 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes – None

3.0 Information Items – None

4.0 Audience Participation –This is an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Public Hearings– None

6.0 Worksession Items

- 6.1 Summary: Water Master Plan
Staff Person: Ryan Marquardt

Ryan Marquardt, Associate Planner, reviewed the purpose for having the Water Master Plan (Plan) and the process for adopting the Plan as a legislative amendment to the Comprehensive Plan. The Plan would come before the Planning Commission for public hearing sometime in 2011. The Citizen Utility Advisory Board (CUAB), established by City Code and advises the Council about utility rates and capital improvement projects, had already looked at some of the work for the Plan and would continue to be involved. Council had already looked at the scope and request for proposals and would make the final decision on the Plan's adoption.

Zach Weigel, City Engineer, presented the Plan, which included an overview of the City's water system and an explanation about why the City was doing a new Plan, rather than an update of the existing plan. He also discussed the work being done by the consultants.

Staff responded to comments and questions from the Commission as follows:

- Daily usage figures were not available at this meeting but would be provided at a later date.

- The City had actually seen a 1-2% overall decrease in water usage over the last 15 years, compared with a population increase of about 1% per year. The City did not have water usage broken out by commercial versus residential.
- About 11% of the water the City produced was unaccounted for according to usage records. The difference was due to leaks, fires, for which water was not metered, and other anomalies. This information was based on only the last 2 years of data; the meter at Well 5 was installed wrong which negated generating accurate information from data collected in prior years.
- Staff was basing the projected increase in water needs strictly on land use data, not population growth. The consultants were asked to include data for both buildable and underutilized lands to determine future water demands.
 - The current zoning was used to determine water demand, not possible future zoning changes. Underutilized lands included parcels which were zoned for higher density, but currently developed at a lower density.
- The Urban Growth Management Area (UGMA), a theoretical planning area, was currently served by Clackamas River Water. The City had an agreement with the County to coordinate on development and providing services there when needed.
- Water use from other providers through interties only occurred during emergency situations and was rare. All 7 wells were currently operational and had been for the past 2 years. All the wells were on the Troutdale aquifer.
- The consultants would not be testing for leaks; that was already being done by City maintenance staff.
- The existing system was a conglomeration of about 4 different systems that the City had acquired over time. It was quite old with a lot of cast iron, steel pipes, and lead joint pipes. Areas with lead joint pipes would be put into the database to determine whether they would be replaced.
- The Troutdale aquifer was 300 sq miles, covering most of Multnomah and Clark counties. The only other user was the City of Portland for their emergency back-up wells.
 - The water quality person in the City's Operations Department had reported that they do keep data on the stability of the aquifer's level, and it had been stable.
- The consultants were looking at above-ground issues, existing systems, and projecting what improvements would be needed for the City to provide water service in the future. They were also building a hydraulic model, which was where most of the \$200,000 in consulting fees had been spent.
 - West Yost Associates had been chosen from among four consulting proposals received as a result of a Request for Qualifications. Proposals were ranked based on a scoring system by the Water and Engineering Departments and West Yost received the top score. All the proposals had been similarly priced.
- With regard to stormwater management, which was not part of this Plan:
 - Removing or replacing drywells or drainage wells within a certain distance of the City's water wells was an ongoing project. The drywells needed to be replaced with a pipe system, which was very expensive. Stormwater could not be put into an underground injection control (UIC) device. A drywell was a UIC, and they were all old. The City was slowly coming into EPA compliance. All the UICs were mapped. Drywell replacements were not part of the Plan.
 - Bioswale systems were an option for piping stormwater. There was no clear definition of a UIC versus a swale. Stormwater could be treated and then put into a pipe system through a swale in any area within a 2-year travel time from the surface to the

groundwater table in the zone of a well. A swale could be a problem if the water entering it was not already clean. The 2-year travel time defined the geography.

- Portland, which was situated over the aquifer, was installing bioswale systems. Milwaukie had adopted Portland's stormwater manual and was following those policies, although Portland was not on a well system.
- The 2-year issue regarded stormwater close to actual well points. Maps showed where the 2-year time of travel applied. The City could do infiltration treatment swales in those areas, but it would have to be approved by DEQ.
- It was significantly cheaper to do swales rather than piping for stormwater.
- The Plan was intended to establish a baseline, understand how the water system worked, and project future needs. Micro-generators, which would generate electricity at the point of outflow from the treatment plants, could be addressed in a separate report. The Plan would not preclude the City from doing that.
- The consultants had preliminary numbers indicating peak hours and seasons of demand. That chapter was being completely rewritten. The highest usage was in August due to irrigation.
- The Plan would not include information on plans for grey water systems or rain water collection systems that the City could require of City buildings, as well as industrial and residential properties that would alleviate the peak usage. Those items could be addressed separately if staff was so directed.
 - Those issues applied to more than just stormwater. If fresh water currently used for irrigation could be replaced with reclaimed stormwater, future fresh water needs could be greatly reduced.
- As part of the City's Comprehensive Plan, this Plan should include discussion about conservation as a policy goal as well as the more efficient use of water.
- Fresh water usage had decreased in the last 20 years, and projections were being based on maximum build-out, which may or may not occur in the next 20 years.
- The Plan was not just a report, but a plan for maintaining the current water system. The scope was not just to draw conclusions and data, but to provide recommendations and management tools to help City staff continue the modeling and continue to address development review.
- Staff sought questions and feedback from the Commission about the Plan to help determine what could still be incorporated into the Plan itself, what might need to be in the Comprehensive Plan policies, and what might be entirely different projects or programs at some point in the future. Comments about water conservation, etc., were valuable.
 - The purpose of the worksession was to start the discussion and get ideas on the table so staff could figure out how to address them before returning to the Commission for a recommendation.
- The Wastewater Master Plan would be another active Master Plan to come before the Commission in a few months. Stormwater management was not being addressed at this point.
- Conservation and redirection of wastewater needed to be addressed in the big picture. The 1% reduction in consumption was likely due to conservation, which should be taken into account in the Plan.
- The Plan should address billing. Water usage was currently a small percentage of the water bill compared to user fees and sewer charges. Billing was not necessarily based on consumption. City sewer bills were based only on winter usage, because summer usage involved so much lawn watering. A billing policy change by the City to financially encourage conservation would go a long way toward accomplishing results.

- Tankless heaters, low-flow showers and toilets would continue to increase if incentives exist for citizens and developers to add them.
 - Staff would consider where conservation goals and sustainability incentives could be best addressed, whether in the Plan or Comprehensive Plan where the utilities section would be updated.
 - The City should likely be setting policy for sustainability and conservation in other areas, such as building practices, and review information and incentives so that the City is doing more in different areas.
 - **Ms. Mangle** noted the email she sent inviting the Commissioners on a ride-along with Don Simenson for an interesting tour of the City's water system. He really knows the system and could probably answer a lot of their questions.
 - The consultants' contract was originally scheduled to end in November, but was extended to February 2011. A lot more work had to be done on the hydraulic model than anticipated.
 - Regarding Item 6.2.3 Abandon Obsolete Water Mains and Transfer Services on 6.1 Page 8 of the packet, new water mains had been installed 10 to 20 years ago but the services were not transferred. There had been political uncertainty whether the City wanted to be the main service provider for many different services, and this was part of that issue. The City was now in the process of switching over to the new mains. The redundancies would be abandoned; most were old, 4-in water mains in poor condition.
 - Staff would return when they had actual figures to share, as well as information on the age of the system, where lead joint degradation was most prevalent, and numbers on water volume so they could quantify the 11% loss.
 - The Commission also wanted to see work on revising billing practices to place more emphasis on lowering consumption to incentivize users to conserve. The City was not currently promoting conservation.
 - While conservation would affect the needed supply, it would not impact the size of the City's water mains or storage needed, which was based on fire flow.
 - The City's past problems with billing were still being sorted out, but a lot of progress had been made. Commercial accounts were complete and residential accounts were being addressed. Citizens would receive personal contacts regarding corrections.
- 6.2 Summary: Land Use and Development Review Process Tune-up (Briefing #6): Review Conditional Uses, Variances, Nonconforming Situations, Amendments, Development Review, and Procedures draft chapters
Staff Person: Susan Shanks

Susan Shanks, Senior Planner, distributed the PowerPoint handout "Land Use and Development Review Tune-up" dated November 9, 2010, highlighting the key policy changes made to Title 19. She briefly noted the reorganization of several chapters, noting the bulk of the changes included new Milwaukie Municipal Code (MMC) Chapters 19.800, 19.900, and 19.1000.

- Staff sought feedback from the Commission about four primary policy topics, which were discussed in detail with the subcommittee, Commissioners Batey and Gamba, last week. Asterisks within the PowerPoint denoted the policy items for discussion by the Commission.
- She noted the Code project was a team effort, and introduced consultant Sarah Breakstone of the Angelo Planning Group, whose work was funded by the TGM Grant, and Ryan Marquardt, Associate City Planner.

Ms. Shanks reviewed the key policy changes to the following Code chapters with discussion

and additional comments from the Commission and staff as noted:

MMC Chapter 19.800 Nonconforming Uses and Development

- Rights to Rebuild. Staff proposed retaining the current provision regarding a citizen's rights to rebuild a nonconforming structure in the case of fire or other destruction out of their control. This decision was based on the advice of the City Attorney and consultants.
 - If the Commission disagreed, both the Commission's and staff's recommendations could be forwarded to City Council for a decision.
 - Alternatively, staff could put the item on the Code fix list if the Commission felt strongly that that was the direction the City needed to go, and it could become part of another project.
 - **Damien Hall, City Attorney**, explained the issues involved in changing a citizen's right to rebuild nonconforming structures with these comments:
 - This type of policy change would require a lot of public outreach. Citizens have had this right and understood that they could rebuild their structures if destroyed. They also may have made investments accordingly.
 - Insurance policies could rely on the right to rebuild, and changing that right would potentially void those policies.
 - The loss of a home or business to fire or other damage was not the best time to get rid of nonconforming structures, when the owner was under distress.
 - Other tools were available to address the problem. Denying rebuilding seemed like a borderline taking situation and warranted exploring other options. Perhaps the City should consider buying a structure if it was that offensive.
 - Encroachments into the right-of-way were a different legal scenario than not meeting a setback standard on private property. The City could tell a citizen at any time not to encroach; they did not have the same rights to maintain or retain that if the structure changed.
 - This policy allowed citizens to retain a zero lot line, if they so desired. A City sidewalk could be built up against the home and the gutters would run right onto the sidewalk. If that house burned down, it could be rebuilt in the same spot rather than being moved 20 ft back from the sidewalk.
 - Rebuilding nonconforming structures due to loss was a rare occurrence in the City. More often, citizens voluntarily want to alter or demolish nonconforming structures, in which case, the City would require conformance. The right to rebuild was limited to destruction by an accident, so the policy would not result in the magnitude of change envisioned.
 - One major concern was that nonconforming structures often have more than one nonconforming issue. Structures with zero setbacks could have limited lot space that would not allow normal setbacks or other policies. Imposing this policy could potentially make something unbuildable.
 - The policy could be changed so nonconforming structures could not be rebuilt and then owners of destroyed nonconforming structures could request a variance from the Commission. Perhaps the associated fees for that process could be waived.
 - Not allowing the identical structure to be rebuilt could still be constituted as a taking, even if the owner could come before the Commission to request authorization to rebuild.
 - The City had no idea where all of the nonconforming structures were. Every time the Code is changed, nonconformity was created. This policy change would not address a set problem and would be very aggressive without a certain and specific target. The City could end up facing a lot of unintended consequences and risks.
 - Reviewing each destroyed structure on a case-by-case basis was proposed, rather

than accepting flaws in the old policy. The entire scenario could be reviewed to determine what options were available to bring the nonconforming structure into conformity.

- The best practice was to move nonconforming structures into conformity whenever possible.
- Adding another layer of process, such as having citizens come before the Commission, would involve the analysis of various competing issues like Willamette Greenway (WG) or Water Quality Resource (WQR) area requirements. This would cost citizens time and money even if the process was free. The City would not be able to take on all that analysis. The City needed to be smart about where that process was added and to which properties. The entire scope of the problem was not understood.
- The City needed to be careful moving forward with regard to unforeseen limitations on homes or businesses. Owners might be left with a less valuable structure.
- The insurance company aspect was important. Insurance companies tend to be very strict about building exactly what was there before.
 - The fact that insurance companies and appraisers called to ask if structures can be rebuilt if destroyed implied that other cities' codes may restrict building some structures.
 - Some cities have a more nuanced approach with some parameters, but usually allowed for rebuilding that usually defaulted to at least the footprint. Portland allowed the rebuilding of the same footprint, but the rebuild had to conform to the current height limitations, for example, if the structure was previously nonconforming as far as height.
 - A policy that allowed a case-by-case consideration and instructed future Commissioners and staff to be "wisely lenient" might work.
 - The Commission would then have to determine the criteria to lay the groundwork for such decisions. The Code would have to be very well written.
 - It should also be worth the cost and level of analysis required from the property owner. Coming before the Commission with an obvious case of approval or denial would be a waste of time and money.
- The City needed to be sensitive to the fact that these owners would be caught in a moment of distress.
 - Staff confirmed that the few cases where this Code had applied really were accidental losses. It did not apply to property owners wanting to replace or repair failing structures. It had been primarily applied in cases of loss in fires.
 - Staff did not know whether the 1996 flooding had resulted in the application of this Code.
- Staff was not opposed to looking at changing the policy, but it would require more careful thought in terms of how to craft it and what other good models were available. They did not feel it was wise to include it in this Code Tune-up Project. It had not been on their radar as a problem that needed to be fixed. Staff understood the Commission felt strongly that they look at it.
- Since insurance agents did call the City and ask about the rebuilding policy, there may be options the City could consider that would satisfy the Commission's desire to address bad building decisions of the past. Options being employed by other cities should be explored.
 - The City would never have a voice in whether or not insurance companies had to pay property owners for rebuilding, because it involved a private contract between the business and consumer.
- The urgency of this Tune-up Project was based on the timing of the funding for the consultants work on this Code project and the Residential Design Standards project,

which would end in June 2011. The consultants' scope included the final draft of the Code. The deadline did not apply to actual adoption of the changes.

- The intent was to move these Code amendments forward, even while the Residential Design Standards project was still going because that project would require many of the tools being created in this project. The community was more interested in the Residential Design Standards, but the tune up was the foundation for that.
- The City would not necessarily need to wait 2 years to return to this policy issue, but some things could not be addressed right now and continue moving at the pace required. There were more controversial issues that staff had not foreseen tackling.
- Amortization of Nonconforming Uses. This proposal would create a process whereby the City could discontinue a use in the future. Some land uses were not compatible and some were actually detrimental to the community. Staff hoped to adopt the amortization of nonconforming uses tool so the City could prevent certain uses from continuing if necessary.
- Staff was working with the City Attorney to differentiate between high and low impact uses. Studying uses now would give the City the opportunity to evaluate whether some uses were in the right location for the long term, and amortizing could help create the desired vision for various neighborhoods.
- This policy change would create the framework for the future; not identify specific properties the City would want to discontinue at this time. Several sites in the city were noted where amortizing nonconforming uses could be a beneficial tool.
- Guidelines and controls would need to be written into the amortization tool beyond just high or low impact to protect against overly aggressive application of the policy.
- Current draft language distinguished between high and low impact. The tool would not apply to uses not negatively impacting surrounding properties, such as a floral shop in a neighborhood.
- Once high impact nonconforming uses were identified, Council would consider a list of criteria when determining an amortization schedule. The idea was to provide some sort of fairness for the property owner. The value of the property and improvements and how long it had been nonconforming would be considered to see if a property owner had an opportunity to recoup their investment. Negative impacts on surrounding properties and the fact that it was nonconforming would also be considered. Council would then develop an amortization schedule accordingly, such that the use in question would terminate on a certain date.
- As written, Council would direct the Planning Director to evaluate and identify high and low impact uses. There would be both staff and then Commission level review. If property owners were not satisfied, they would also be able to take the matter before Council. With three levels of decision makers, including the elected Council, abuse was highly unlikely.
- This action was not considered an imminent domain issue and did not require compensation to be made because the City Zoning Code authorized the action.
- Once the amortization schedule ended, a legal nonconforming use would become to a violation of the Zoning Code.
- Theoretically the owner could leave the property vacant to spite the City, but that was not expected nor was that the policy's intent, although it was the owner's prerogative.
- Council was unlikely to invoke this power unless there was a huge neighborhood outcry. As elected officials, Council would be held responsible for whatever decision they made on this. Amortization also had to be initiated by Council.

- As written, the policy did not set a minimum or maximum amortization schedule, but it would probably start with approximately a 5-year period. This timeframe would extend into the following Council election, so the new Council would be addressing the issue.
 - It was unlikely that a property owner would wait until the end of a schedule to choose an alternative use.
- This tool is being used elsewhere in the country.
- This tool would be used in extreme situations where there really was a public outcry and was just another parameter that could be set on certain uses not considered appropriate. This was a big hammer and hopefully would be used sparingly, if at all.
 - It would be effective as a threat; something that could be used in an egregious high-impact situation. The City might not actually have to use it, but it could prompt conversation to work out problems.

MMC Chapter 19.900 Land Use Applications.

- 19.904 Community Service Uses (CSU) and 19.907 Downtown Design Review were being moved, but not revised, as well as all the sub-applications under 19.910 Residential Dwellings. Director's Determination 19.903 was being expanded to enable a formal determination for other citizens' requests, such as whether a use was similar to those allowed outright.
- **Chair Klein** questioned why the City even had a CSU since it essentially put nonconforming uses in an area where they should not necessarily exist otherwise. The City looked at nonconforming uses as being parks and churches and schools, etc. They should either be allowed or not allowed in an area. A CSU had put a church in the City's industrial area.
 - Staff would be considering eliminating the CSU designation and making them a type of conditional use since essentially CSUs are a type of conditional use. This would allow things to be specifically identified in the Code. It was unusual to have a Community Service section in the Code; most other cities had this type of use as a conditional use.
- Conditional use loss of rights. Staff had proposed not continuing conditional uses into perpetuity; if the use changed or was discontinued for 3 years, those conditional use rights would be lost. Staff was now proposing a modification to exempt loss of rights for conditional uses that were residential in nature.
 - A possible unanticipated consequence of broadly applying loss of use rights would be the negative impact to uses where the structure and use were very much intertwined. Specifically, residential uses that are designed to be houses or duplexes that could not easily become something else. If one side of a duplex that was a conditional use in a residential zone remained unoccupied for 3 years, the owner would not lose his rights to the duplex
 - In contrast, a commercial building could have a conditional use one day and an outright allowed use another day. It was a much easier transition.
- Type II variance allowances. Staff was proposing another Type II variance procedure that limits what one could do as a Type II variance and would allow smaller types of variances to be approved at the staff level.

MMC Chapter 19.1000 Review Procedures

- Land Use Approval expiration dates. Staff sought feedback about the new language.
- Updates to referral/notice procedures. Newspaper notices were no longer the best way to communicate with the public in every case, and staff wanted the flexibility to use different tools. Newspaper notices might still be used at times, but would no longer be required. The proposal required different sign notifications and using more current technology to get the

word out. Currently, sign postings were not required for Type II applications, so neighbors would be noticed by mail, but someone walking by who lived just outside the notice range would never know about the application.

The Commission and staff discussed the four primary policy topics of concern with these key comments:

MMC Chapter 19.1000 Type II Variance Allowances; Variances to front yard setbacks

- The subcommittee reviewed staff's proposal for a 25% Type II variance with a minimum front yard setback of 15 ft. Properties that already had a minimum setback of 15 ft, like in the R2 Zone, would not be eligible for a Type II variance, only those zoned R10, R7, R5, and R3 Zones that would potentially have a 20 ft setback. That was to address the issue of keeping a setback that would reduce some of the opposition the City received on sidewalk projects, while still allowing someone to build a set of stairs if it was routed out to Code.
- The Commission consented to the proposed changes.

MMC Chapter 19.1000 Review Procedures; Land Use Approval expiration dates

- The subcommittee and staff reviewed the new language and approach to having approvals expire. Most approvals involve building permits so the proposed approach was as follows:
 - Approvals involving building permits must be obtained and paid for within 2 years, along with System Development Charges (SDCs), etc. Final certification of occupancy must be obtained within 4 years. A process would provide for a 2-year extension; however, a project that required no building permit, could apply for a 4-year extension. Multiple extensions would be available.
 - Partitions and historical use exceptions were projects that do not require a building permit.
 - If no extension was approved, the approval would expire and the developer would have to start over.
 - Staff hoped this approach would be clear and objective, rather than trying to determine substantial completion.
- The objective was not to force someone to abandon a project that was half built, but to ensure that a project was built under the conditions of its review, and that the project did not outlive its permit.
- Within the first 2 to 4 years, applicants would not have to prove nothing had changed, but when applying for an extension, the City could require additional information if conditions had changed, such as traffic or environmental protections.
 - Staff clarified for Mr. Whistler in the audience that if an applicant was working furiously and approaching the 4-year certificate of occupancy deadline, hopefully they would be managing their project well enough to have asked for an extension in advance of that time period.
 - Unlimited extensions were available, provided the applicant was showing progress toward completion of the project.
 - If an applicant neglected to apply for an extension and let the land use permit expire, technically, he would have to start over. The City wanted to promote good project management and reduce the staff time required to remind citizens to take care of their applications. With this as a policy applying across the board, it would become part of the routine and be consistent.
 - The extension process would be fairly straightforward, but applicants still needed to go through it and show that the conditions were still relevant.
 - The limits would all be defined in the approval documents. The proposed timeframes

were not particularly stringent compared to other jurisdictions.

- The City tended not to deal with professional builders, but with citizens doing their own applications, which was why they did not want to be overly stringent. They wanted to work with people toward getting their projects done.

MMC Chapter 19.900 Land Use Application; Conditional Use Loss of Rights:

- With residential now out of the picture, 3 years seemed like a long time for an existing conditional use to sit unused or abandoned.
 - Staff was open to adjusting the time frame. Ranges of 1 to 3 years were used in other cities.
- In some instances, the City had approved a conditional use related to the changing circumstances in a neighborhood, but it was never intended to be a long-term use and was not a good fit for the neighborhood once the changes were complete. Having the conditional use lapse after 1 year made sense in that regard.
- The neighborhood surrounding a property with a 20- to 30-year-old conditional use might have changed in that time, resulting in a conditional use that was no longer appropriate.
 - One year seemed aggressive, almost like waiting in prey.
- If a business closed and was seeking financing to reopen, would it be considered unused? Maybe a definition needed to be created for what "out of business" meant.
 - A business license or mail receipt could indicate a business was not abandoned.
- A conditional use was attached to the property not the ownership.
- If a conditional use expired, business owners could always come before the Commission to request a new conditional use allowance.
 - If a business were seeking financing to reopen and did not know whether they would be granted a new conditional use, it might impact their ability to obtain financing.
- What determined the expiration of a conditional use? A definition should be established and written into the policy.
 - It was not just someone closing their doors due to a family tragedy. Someone would have to actually give up a lease, move out of the premises or stop doing business.
 - A Director's Determination might come into play in such situations to evaluate the facts of a specific case.
- The Commission agreed 2 years abandonment should be an adequate timeframe for a conditional use to expire. That timeframe could be re-evaluated if needed.

MMC Chapter 19.800 Nonconforming Uses & Development; Amortization of nonconforming uses:

- It was possible that this policy would never come into play, but it would be good to have a "hammer." Council members had been hesitant to enforce even smaller issues.

The Commission and staff addressed additional questions regarding the proposed Tune-up Project as follows:

MMC Chapter 19.905.5 Conditions of Approval; Limiting Conditional Uses. The list of limitations was good as a default, but the subcommittee believed having the flexibility to limit the duration and transferability in selected cases should be considered. Classic Memories and Sweet Pea Daycare were cited as examples. The Commission should have the option; it would not necessarily be used with any regularity (6.2 Page 7). Discussion was as follows:

- The policy related to businesses in permanent structures. They would be asking someone to come in and operate a specific kind of business for a limited time. What if the business became very successful supplying products or services in the community, and then the 5

years ended? That business would have helped develop the neighborhood, would they now be kicked out?

- If the archery business went away, the City would not want that space vacant. Until South Downtown was developed, the City would want something operating in that space. The City would approve a business coming in, but maybe only for 5 years, because then the City would be building something else.
 - Nothing said a business could not come back, or that the City could not consider some type of extension application. The limitations would provide a useful tool in selected transitional situations. For example, using some open lots for sports fields for a couple of years could work with the understanding that the site would be developed eventually.
- If limitations on duration and transferability were applied to conditional uses, they should also be applied to use exceptions, CSUs, and to the provision of nonconforming structures that could only house a nonconforming use. If legally acceptable, the limitations needed to be consistent across the board and should not be applied only to conditional uses.
- **Mr. Hall** stated that legally, things could be designated as temporary uses; most Codes did this. It was not typical to see temporary uses associated with a conditional use. A conditional use allowed uses the City wanted to have, but enable the City to have some control over their numbers or location.
 - He advised separating the idea of “temporary use” from the concept of “conditional use”, and discussing what they wanted to have as temporary versus conditional uses.
 - Policy-wise, it put people in a really tough spot, because a conditional use was a completely discretionary decision on behalf of the City. They would be allowing people to run a business in a location for x amount of time, but then discontinue it at the end of that time.
- There were times the Commission wanted to impose a limited time conditional use as opposed to imposing a bunch of additional conditions in terms of what was built, etc. It was sort of a trade off: the Commission would not require that the business do some things, but they would also sunset the use at some point.
 - Something similar was done with the Sweet Pea Daycare with regard to transferability, not necessarily a time limit on the use; it went with the ownership. If the business were sold, the conditional use would no longer be allowed.
 - The transferability was a related limit because it would give the City the freedom to intervene when a business was no longer profitable.
 - The point was that the policy would be impacting profitable businesses that employed people, perhaps bringing people into downtown, and then tossing them to the side due to an imposed time limit on the use.
- **Mr. Hall** clarified that the proposal would apply to new businesses being established. As a policy item, a better way to guide what went in might be limiting the permitted uses, not creating some sort of a transitional zone.
- The City had many transitional areas where a vision existed for something different, but did not want to stop people from having going concerns until the City got closer to that vision.
 - A conditional use was not an outright allowed use; it was sort of a matter of grace.
- **Mr. Hall** noted that once the policy was approved, it would probably be on the same footing as a permitted use in most places. Applicants would have to modify it, return and revisit their assumptions, but it was presumed that as long as they were modifying within certain bounds it would be permitted.
 - The conditional use was not usually something unwanted in the community. If the City wanted to limit what was coming in, they might want to limit the use on the front end versus allowing a bunch of uses not consistent with the City’s vision, and then basically

keep those people in limbo for the time period.

- Ideally, the City would rezone and make some current conditional uses outright permitted uses, but so many Code projects were in the queue that revisiting the lists of conditional uses could be five years from now. Something needed to be put in place in the interim, while all the transition was going on around light rail and everything.
 - Someone could apply right now for a new business on property the City did not want to leave vacant and unused, but the City would not want to commit to having something that could stay for 20 years.
- If someone came in and bought those blocks now and built something that was permissible now, what could be done in the future?
 - That was a different scenario. If someone wanted to rent the archery shop and put in something else, instead of having it sit vacant for the next 5 years, the City wanted them to know up front that 5 years from now that would not be there anymore.
 - That meant that the renter would be dictating the end use of an area. The market would drive what the value of a given property would be as well as who the inevitable occupants of that area would be, regardless of who was in that structure currently.
 - The City would have a hard time telling someone they wanted their business and wanted them to work there for 5 years, even though they really did not like the cut of their jib, but after 5 years the City had bigger and grander plans. It was not going to work.
 - At the end of 5 years, if the City was not prepared to move on that site and do something different with it, were there legal ramifications if the renter had to move out and wanted assurances that the new development would go in?
 - These were all arguments that might come up in a specific context. The discussion regarded having a tool that might be used on limited occasions, not for something that was a routine part of every conditional use.
- **Mr. Hall** inquired how such limitations would be structured. It would require populating some kind of list of temporary uses, separate from conditional uses. It engendered arbitrary decisions. Creating any objective criteria would be difficult if the City just said they could limit any conditional use to 5 years if they believed they did not want the business around.
 - A list of temporary uses would be a written out transition policy. Certain uses would be allowed, but only for 5 years; other uses consistent with the City's future vision would be allowed on a conditional and permitted basis. Another category of uses could be created, but it would be difficult to determine how to go about applying them.
- On 6.2 Page 7, 19.905.5 Conditions of Approval listed limiting the height, hours, days, place, and manner of operation. Why not add "K. limiting the duration of the use"?
 - **Mr. Hall** explained that an option existed to limit the duration of the use; it was a discretionary approval.
 - If the City approved the use, they should not have to approve it forever. Perhaps the City did not have to, but that ought to be enumerated so applicants know and it was on the record.
- Not having amortization of nonconforming uses would create more concern about conditional use matters that came in.
 - That was the whole point of having the policy; if the City was skeptical of a use, perhaps it should not necessarily be brought into the picture anyway.
- This provision would not be used that way, but when the City had a vision. The City had planners and hired expensive consultants for a reason, to develop a vision and provide direction for the City. By the same token, they did not want spaces sitting empty for 6 months, 6 years, or 12 years, while that vision came to fruition.

- This policy would provide the City a tool on conditional uses. For instance, the downtown had odd restrictions; some of it was office and some commercial. The City might want to allow office use in commercial zones and commercial uses in office zones.
- **Ms. Mangle** noted the language stated, "not limited to." If this were an important issue on a specific application, the Commission was not limited from pursuing the time limitation if everyone agreed the conditional use would not be approved without that kind of limitation, which was what had happened with Sweet Pea Daycare.
 - Having these limitations might be a bad idea. If there was that much concern for the use, the Commission probably should not be approving it. If the City ever had to follow through on one of these, it would be very difficult to enforce.
- The Classic Memories downtown location was a use exception, which was a similar concept in some ways. Classic Memories had billed it as a transitional use, claiming they did not expect to be there long-term and intended to retire soon. The Commission had stopped short of incorporating that as a condition, but it did weigh into the decision. They did move out and had another location in the City.
- **Chair Klein** added another consideration was that 20 years from now a different Commission might apply this policy to every application and kick people out after 12 months.
 - He did not think this was a good policy. He understood it and the intent was great, but it was scary. The Commission was already working to get rid of holes written in the Code 30 years ago.
- Excluding this policy would not preclude the Commission from creating some transitional uses; approval criteria would be needed however.
- **Ms. Mangle** believed the issue being raised was important, but including such language in this Code section would only address conditional uses; it was a broader issue to consider. This was something to put on the list of Code fixes to keep discussing.
 - Conditional use, CSU, use exception; it was all the same question and it should be an available tool for all of them.
 - All those tools were not available to everybody now. The use exception criteria would not help something be a transitional use. Limiting it did not help, if a building was an office use, it had to be used as office and could not as a bowling alley.
- The struggle with downtown was how the City could allow for temporary uses that the City did not necessarily want to see long term and empower decision makers with the right tools to make a decision without being completely arbitrary or anticipating something that will never happen.
 - The issue was when that temporary use became successful, when it became the thing that drew people into downtown, would the City have to shut it down? Would the business have to do another land use process for something that was wildly successful?
- The occupant of that building or business would be at the whim of the Commission on a decision that was made 5 years prior and possibly by a previous Commission. That was not good policy.
 - That occupant could then move 2 blocks elsewhere, leaving that spot vacant.
- The suggested policy involved a 5- or 7-year window, not 6 months like more traditional temporary uses. There were businesses who would apply for that. It depended on the cost of real estate, their business plan, etc.
- Having a different Commission would be an issue for the business occupying the building under a time limit. When applying to have their permit continued for another 5 years, those on the Commission who were open to the idea and approved the first permit might have changed. The new Commission might be totally against it. This could mean that the conditions had changed, but it also might mean that the decision makers' personalities had

changed too.

- This issue regarded economic development and redevelopment, and how the City could both control and foster that growth, which was something the City needed to be thinking about.
 - Graham's Building, for example, had trouble keeping full occupancy. There were probably some uses that could have been good transitional uses the City might not want to see when South Downtown was redone.
- This policy might make it harder to fill a vacant building. A tenant looking for a place to rent would probably not want to sign a lease that gave the landlord all the power after a certain number of years, and where the option to extend the lease was unclear. If it was sitting vacant but that power was in the Commission's hands, it was the same type of deal.
 - The market would drive the market. The fact was that if a business was not successful, it would go away.
- Throwing a discretionary criterion into the conditional use mix might not be legal to impose. What would happen in 5 years? There were reasons laws created nonconforming uses, which the City could probably get around.
- **Ms. Mangle** noted that no conditional uses existed downtown, just limited uses, permitted uses, or prohibited uses. The issue was appropriate for downtown, but the conditional use would not be a tool used to address it, because there was a use exception, or continuation of a nonconforming use. Limited use was allowed outright.
- The Commission consented to not include the limitations policy.

Purpose Statement.

Mr. Hall explained that purpose statements at the beginning of each Code section were not approval criteria unless the Code actually stated an application had to comply with the purpose statements. Milwaukie's Code did not say that, so purpose statements would not be a determining factor in approval or denial. The idea was that each of the criteria was consistent with that purpose statement, and then in the instance where it was not clear how the criterion applied to a particular application; the purpose statement would give the Commission direction in interpreting the criteria. If a couple outcomes were possible and it was not clear how they fell, the Commission would go toward the one supported by the purpose statement.

- Upon appeal, the Land Use Board of Appeals (LUBA) would review the consistency with purpose statements if someone challenged the City's interpretation of its own Code. The City could get remanded if they interpreted it in a way not consistent with a purpose statement.
- The purpose statement was not an approval criterion where the Commission would say a whole application was inconsistent with the purpose. The actual numbered criterion was still needed.

Commissioner Batey noted the purpose statement for the Variance Chapter was very permissive and read, "Variances may be granted for the purpose of fostering reinvestment in existing buildings, allowing for creative infill development solutions, avoiding environmental impact, and/or precluding an economic taking of property." An applicant might believe they had a creative infill development solution, but the Commission denies the variance because the criteria are not met. In cases where the City had very subjective criteria and a very permissive purpose statement, how might a lawyer use that purpose statement to challenge a Commission decision? The City was going from a very restrictive variance in the existing Code to very permissive variance criteria, and even a very permissive purpose statement. She was concerned about this particular purpose statement

- **Mr. Hall** responded that subjective criteria enabled the Commission to use its discretion.

When a City decision was appealed, there would be a presumption that the City's interpretation of its own Code was correct, unless it was clearly irrational. In the case of subjective approval criteria of the variance process, the City would be given a wide latitude. Yes, an attorney could argue that the purpose was to provide creative infill and spend a lot of time trying to prove that a proposal was creative infill, but that would not get them to the concept that the City's interpretation was completely inconsistent with the Code.

Staff reviewed the next steps for the Code Tune-up Project as indicated in the PowerPoint handout with these additional comments:

- Ms. Mangle's presentation to City Council on November 16 would discuss this project in the context of other Code changes, including the Residential Design Standards Project, Natural Resource Overlay Project, the Parking Chapter Amendments, and the multi-year Code overhaul project staff was entertaining and the direction they wanted to go.
- Any other input, comments, or questions should be sent to staff prior to December 10, when staff would submit the third and final draft to DLCD. The City was required to notify DLCD and provide the draft amendments 45 days in advance of any hearings on the Code Tune-up Project. December 10 was the deadline for submission to get a January 25, 2011 Commission hearing. In the interim, staff would describe the actual proposed amendments in more detail to Council, providing a deeper overview of the key policy changes to get them familiar with what they would eventually review at a public hearing.
- Staff recommended that the Commissioners watch or attend that Council meeting. The Commission had worked hard on the Code Tune-up Project, and staff would be asking for representatives to speak to Council at the hearing stage, likely in March. Having the Commission represented would also show that this was not just a staff project, but did involve the Commission in a real way.

7.0 Planning Department Other Business/Updates

Ms. Mangle reported that staff had done the land use and development retraining. It was well attended with 13 to 14 people, including someone from every Neighborhood Development Association (NDA), and two who were not associated with NDAs. Staff had received some good feedback and she hoped to do some training once a year. She would email the links to the website where all the training materials were posted to all who attended as well as to the NDA Chairs, Land Use Committees (LUCs) and the Commissioners. They had also talked about the Code Tune-up Project at the training and all the draft chapters were now available online.

- She found that videotaping Commission meetings, particularly hearings, was looking more feasible than she thought. The City's contract with Willamette Falls Television, who did the Council meetings, had some capacity to add some Commission meetings. She had thought it was going to be a bigger budget concern.
 - The video would be posted to the website but not broadcast on television. Videotaping would improve the audio recording and address the issues they had been having. It had not been determined whether Ms. Pinyerd would still attend meetings. With a permanent video record, typed meeting minutes may not be needed. LUBA did not require minutes, only a record of decisions. Other cities and Milwaukie's Council still needed written minutes even though they had recordings. How all the pieces would fit was open for discussion.
- In doing more worksessions and having meetings run late, she sought feedback from the Commission about how to make the most of their time. One way to address the issue would be to move the meetings up. The Commission could change the current meeting format by starting the meetings earlier to hold worksessions first and then the regular meeting at 7:00 p.m. for example. It depended how the Commission wanted to do their work. She was open

to making adjustments if the group was interested, and she welcomed any suggestions.

Discussion points from the Commission included:

- Commissioners' work schedules did not allow for an earlier start time on a regular basis.
- As enticing as it was to move the time frame earlier, there was the potential to just fill that time and still continue until 10:00 p.m. Until changes were made in how the Commissioners deliberated and made decisions, the meetings would continue to be lengthy.
- Chair Klein stated he was agreeable to videotaping the meetings.

8.0 Planning Commission Discussion Items

Chair Klein reported that a decision had been made on the '76 Station's LED sign in municipal court. The Applicant was found guilty and sentencing was to occur on May 4, 2011.

Ms. Mangle added that the business owner was also following up on the Commission's recommendation and invitation to return with proposed Code language to address that situation.

- The citation was due to the fact that the owner had not addressed any of the issues by the deadline. It was a separate issue from what the Commission heard, and unfortunately had turned out to be a messy way to handle it.

Mr. Marquardt explained that the sentencing in May was with the understanding that the owner and City were still pursuing options as far as Code changes. The judge had not wanted to step into the middle of that and had not looked at the letter prior to the case because he did not want to bias himself. The letter really had nothing to do with guilt or innocence, but was more informational.

Ms. Mangle confirmed that Clearwire had a Type II application and a tentative notice of decision for approval had been mailed out the previous week. It would not come before the Commission unless it was appealed.

- She reported that the Jackson Street Improvement Project was delayed one month. The shelters had been delayed because the company selected to provide them went out of business. The Design and Landmarks Committee selected another shelter last week, but it would not be installed by the time Jackson St opened on December 5, 2010. Installation would be probably in January or February 2011. Jackson St was still an active construction area as landscaping was still being installed. Bus service would begin on December 5th but the street could open to all traffic sooner than that.

Chair Klein noted that it would be interesting to see what the numbers were on bus layovers and times and what existed before versus what would be there when this opened. Jackson St was being sold as a place where there would be less bus layovers and more parking spaces, etc.

Ms. Mangle confirmed there would still be two buses laying over on 21st Ave.

Commissioner Batey noted that Commissioner Gamba had been quoted in the newspaper about the Lake Oswego bridge. She had not known that the railroad had said no to a pedestrian crossing over the railroad bridge.

Chair Klein responded to the visiting student that light rail would be coming to Milwaukie in 2015. There would be a park & ride at Tacoma St in addition to the one currently at Park Ave.

9.0 Forecast for Future Meetings:

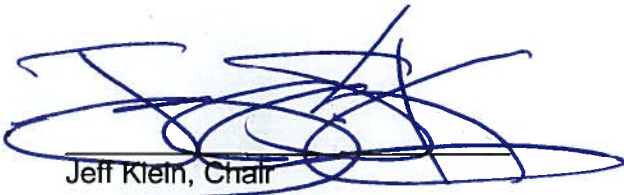
November 23, 2010 1. Tentatively Cancelled

December 14, 2010 1. Worksession: Wastewater Master Plan

Meeting adjourned at 9:27 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc. for
Alicia Stoutenburg, Administrative Specialist II



Jeff Klein, Chair



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday November 9, 2010, 6:30 PM

**MILWAUKIE CITY HALL
10722 SE MAIN STREET**

- 1.0 Call to Order - Procedural Matters**
- 2.0 Planning Commission Minutes** – Motion Needed
- 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 Public Hearings** – Public hearings will follow the procedure listed on reverse
- 6.0 Worksession Items**
 - 6.1 Summary: Water Master Plan
Staff Person: Ryan Marquardt
 - 6.2 Summary: Land Use and Development Review Process Tune-up (Briefing #6):
Review Conditional Uses, Variances, Nonconforming Situations, Amendments,
Development Review, and Procedures draft chapters
Staff Person: Susan Shanks
- 7.0 Planning Department Other Business/Updates**
- 8.0 Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 Forecast for Future Meetings:**
 - November 23, 2010 1. Tentatively Cancelled
 - December 14, 2010 1. Worksession: Wastewater Master Plan

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 speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@ci.milwaukie.or.us. Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at www.cityofmilwaukie.org
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at www.cityofmilwaukie.org
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **TME 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 the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

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 IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **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.
10. **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.
11. **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.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

Jeff Klein, Chair
Nick Harris, Vice Chair
Lisa Batey
Teresa Bresaw
Scott Churchill
Chris Wilson
Mark Gamba

Planning Department Staff:

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Brett Kelter, Associate Planner
Ryan Marquardt, Associate Planner
Li Alligood, Assistant Planner
Alicia Stoutenburg, Administrative Specialist II
Paula Pinyerd, Hearings Reporter



MILWAUKIE

Dogwood City of the West

To: Planning Commission

Through: Katie Mangle, Planning Director *KM*

From: Ryan Marquardt, Associate Planner
Zach Weigel, P.E., Civil Engineer

Date: November 2, 2010, for November 9, 2010, Worksession

Subject: 2010 Water Master Plan

ACTION REQUESTED

None. This is a briefing for discussion only. This is the first of two work sessions that staff has scheduled for the 2010 Water Master Plan. Staff anticipates a hearing for the Planning Commission to make an adoption recommendation in early 2011.

BACKGROUND INFORMATION

A. History of Prior Actions and Discussions

This is the first action for the Planning Commission regarding the 2010 Water Master Plan. The previous Water Master Plan is dated January 2001.

City Council has been involved with the 2010 Water Master Plan as follows:

- February 2, 2010: City Council passes Resolution #11-2010 authorizing a \$195,580 contract with West Yost Associates to produce a 2010 Water Master Plan.
- June 2009: City Council adopts the 2010-2014 Capital Improvement Plan and the 2009/2010 Budget, including the 2010 Water System Master Plan

B. Adopting Master Plans

The Water Master Plan (WMP) will come before the Planning Commission as a Comprehensive Plan amendment. The amendments will include adopting the WMP itself as an ancillary document to the Comprehensive Plan, and amending text within the existing Comprehensive Plan so it is consistent with the WMP.

The City endeavors to adopt all long range plans like the WMP as ancillary documents to the Comprehensive Plan. These plans establish goals and policies for how the City will

manage its resources to provide basic services to its residents, businesses, and institutions. It is important that such plans be incorporated into the document that guides how the City will manage future growth and development. The most recent example of the master plan adoption process is the 2007 Transportation System Plan (TSP). The TSP itself was adopted as an ancillary document and changes to the text of the Comprehensive Plan were adopted at the same time. In addition to being important policy documents, master plans are also living documents that guide the ongoing activities performed by the City. For example, the adopted WMP will be a key document in creating future Capital Improvement Plans that identify which projects are undertaken by the city on a yearly basis.

For legislative land use applications, such as a zoning text amendment or Comprehensive Plan amendment, the Planning Commission is required to hold a public hearing on the proposed amendments and make a recommendation to the City Council.

WATER MASTER PLAN

A. Goals and Contents of the Water Master Plan

The goal for this project is to have a complete Water Master Plan that provides a clear roadmap for the City to make smart and informed decisions as a sustainable and reliable water service provider to the citizens and businesses of Milwaukie.

The key elements of the new Water Master Plan include a new hydraulic model of the water system that will integrate with the City's GIS mapping system, which the City will be able to use and update as needed. Other key elements include water demand, storage, and supply forecasting, emergency water supply analysis, water system capital improvement plan, water system development charge update, and water rate study.

A portion of the City's request for proposals to create the Water Master Plan is included as Attachment 1. The attached section describes the tasks that the consultant will complete as they work toward the finished Water Master Plan. The contents of the plan itself are described on page 7 of Attachment 1 under Task 14.

B. Public Involvement

The plan adoption process includes multiple opportunities for citizen input. The following meetings have been planned:

- 1 public open house – to be held in January 2011. Notice will be provided on the City's web site and in The Pilot. Staff will prepare summaries of the plan and other presentation materials to explain the key elements of the plan.
- 2 meetings with the Citizen's Utility Advisory Board (CUAB) – the CUAB is board comprised of Milwaukie citizens that advise the City Council on utility rates and capital improvements. The plan will be presented to the CUAB at two meetings in early 2011 for their review and input.
- Planning Commission Worksessions and Hearings – staff has one additional Planning Commission worksession planned. We anticipate this will occur in January 2011. The final draft of the Water Master Plan will be available at this worksession, and personnel from West Yost Associates will be in attendance. Staff has built the

adoption schedule to allow for two Planning Commission hearings, if necessary, to make an adoption recommendation.

- City Council Worksessions and Hearings – the scope of work and schedule will include two City Council worksessions and two hearings for adoption, if necessary. The timing of these worksessions may overlap with the other public meetings mentioned above.

C. Adoption

The original project schedule was to have an adopted Water Master Plan by December 2010. This schedule has been modified, and staff now anticipates adoption by February 2010. It is important that the Water Master Plan be adopted by this date so that it can be used for the preparation of the 2011-12 Capital Improvement Plan, which will begin in March 2011.

ATTACHMENT

Attachments are provided only to the Planning Commission unless noted as being attached. All material is available for viewing upon request.

1. 2010 Water Master Plan Request for Proposals, Section 3 (attached)

Section 3 – Scope of Work

3.1 Introduction

The City of Milwaukie (City) is seeking high quality and responsible services from a qualified and experienced individual or firm to provide water system master planning at a competitive price.

3.2 Term of Service

The contract resulting from this Request for Proposals (RFP) shall be for a period of nine months, commencing in January 2010.

3.3 Scope of Work

The previous Water System Master Plan is dated January, 2001 and was completed by Montgomery Watson. A new water system master plan is necessary due to changes that have occurred since the 2001 Water System Master Plan was completed.

- A. The typical update period for a water system master plan has past, therefore necessitating the timely need for this project.
- B. The City needs to be flexible when planning for future growth, with a clear understanding of the improvements necessary for expansion of the water system. This is something that the 2001 Water System Master Plan did not accomplish.
- C. In May 2007, the City adopted new public works standards, which include new design and construction standards for the City's water system. These new standards have changed many of the assumptions that were made as part of the development of the 2001 Water Master Plan. As a result, many of the recommended projects are no longer relevant.

This new master plan will identify and prioritize necessary or desirable improvements for the City of Milwaukie. The master plan will propose facility modifications or additions necessary to address the predicted future needs for water supply, treatment, storage, distribution and the efficient delivery of water services. The planning period for this master plan is 20 years.

Task 1 – Project Management

1.1 Project Administration

Consultant shall provide a Project Administration Plan to direct, coordinate, and monitor the activities of the project with respect to budget, schedule, and contractual obligations. The Project Administration Plan shall be updated on a biweekly basis and submitted to the City.

1.2 Coordination Meetings

Consultant shall provide a minimum of biweekly conference calls and/or meetings between the Consultant and City personnel to review project progress, discuss project challenges and findings, and review early study results. Consultant shall ensure that the City personnel and Consultant team members maintain a shared understanding regarding study direction, objectives, and deliverables.

1.3 Quality Assurance and Quality Control Review

Consultant shall conduct internal Quality Assurance and Quality Control meetings and follow-up with technical experts as necessary during the course of the project.

Task 2 – Data Gathering

2.1 Kickoff Meeting and Project Overview

Consultant shall initiate the project kickoff meeting. Consultant shall prepare an agenda for the kickoff meeting, invite necessary attendees, collect data, and discuss the schedule of the project.

2.2 Conduct Interviews

Consultant shall conduct interviews with City personnel familiar with the water distribution system to collect information on the operation and maintenance of the system and known deficiencies, if any. Consultant shall make site visits with City personnel to specific facilities if necessary. The following is a list of City employees that have been identified to help answer questions and provide information about the water system.

Gary Parkin – Engineering Director

Mike Clark – Water Operations Department Manager

Dave Butcher – Asset Management Technician

Don Simenson – Water Quality Coordinator (Production)

Jamie Clark – Utility II (Maintenance)

2.3 Collect and Review Current Mapping and Water System Data

Consultant shall submit a list of information to be collected (including but limited to, GIS layers, water rights documentation, planning documents, system components, analysis criteria, water supply/source alternatives, water utility billing data, and deficiencies and repair data) and provided by the City. Consultant shall obtain water system information for water systems outside of the city limits from the water provider servicing the area. The provided information shall be reviewed by the Consultant to determine if it is sufficient for completion of the project objectives. If the information is not sufficient, the Consultant shall suggest alternatives.

Task 3 – Water Demand Study

3.1 Calculate Existing Production

Consultant shall determine current system-wide water use based on water production records. Monthly water production records will be provided for Consultant's review and summary. Consultant shall identify the maximum water use for the period of available record and develop seasonal water use trends. Consultant shall calculate water usage for average day, maximum day, and peak hour demand conditions. Calculated use for these conditions will be used to adjust customer water demands before they are allocated to the hydraulic model.

3.2 Calculate Existing Customer Usage

Consultant shall calculate individual user water demands from water billing data. Water use for individual water users will be calculated for average day, maximum day, and peak hour demand.

3.3 Develop System Wide Diurnal Patterns

Consultant shall develop diurnal water use graphs for both small and large users using hourly water production and tank level data that are representative of the maximum day water use patterns for the City.

Task 4 – Hydraulic Model

4.1 Modeling Software Selection

Consultant shall assess current electronic capabilities and provide a brief decision matrix and recommendation in deciding which modeling software best meets the near term and long term needs of the City. The matrix shall include any needed improvements to City's electronic capabilities. The City desires to have an extended simulation period model built on a GIS platform. The mapping software the City currently uses is ESRI, utility data collection provided by Hansen, utility billing information provided by INCODE.

4.2 Model Preparation

The model shall include water system mains, laterals, hydrants, meters, tanks, pumps, valves, and interties. Dimensions and operational controls shall be added for each facility.

4.3 Assign Water Demands

Consultant shall create four demand sets in the model to hold maximum hour and minimum, average, and maximum day demands. Diurnal water use graphs shall be used to calculate a series of multipliers (peaking factors) to be used as part of the model to adjust hourly demands. The diurnal pattern will be entered into the model and assigned to all demand nodes.

4.4 Fire Flow Evaluation

Consultant shall provide a model which allows for temporary floating fire flow junctions to be assigned at any point in the system for use in evaluating fire flow capacity. Fire flow evaluation output shall include a hydrant curve, a formatted report including exported pressure and flow data and a system evaluation report. The system evaluation report shall include an evaluation of the system pressures and velocities encountered during the fire flow and a list of locations at which the pressure falls below minimum levels as designated by the City.

4.5 Model Verification

4.5.1 Develop Model Verification Plan

Consultant shall prepare a draft calibration plan for the model and submit to the City for review. The plan will identify locations for fire flow and pump tests, identify SCADA data to be gathered, and document the testing protocol. Pump tests will include gathering data for a single operating point at each pump or pump station to confirm model pump curves.

4.5.2 Perform Model Hydraulic Verification Testing

Consultant shall provide testing plan, including time frame required. Consultant shall coordinate with the City to conduct calibration testing. City personnel shall assist in performing flow testing, and will be responsible for supplying any tools and equipment required for operation of system facilities. Consultant shall be responsible for supplying all other equipment required for testing.

4.5.3 Perform Model Hydraulic Verification

Consultant shall develop computer model simulations or scenarios for each of the fire flow calibration tests. Model results from the calibration simulations will be compared with the field data and measured against the calibration criteria. Comparisons that fall outside the established criteria will be identified and adjustments and/or corrections to the model will be made until satisfactory results are obtained. Pump test data points will be compared to pump curves in the model. Pump curves in the model will be adjusted if necessary. Calibration efforts will be

coordinated with and reviewed by the City to determine the appropriate level of calibration. The initial pressure calibration target shall be within 5% accuracy. If calibration at some locations cannot be achieved within the time limit, written suggestions will be made as to possible reasons for the discrepancy and what steps might be taken to improve calibration at that location. Consultant shall keep friction coefficient values within realistic range.

4.6 Hydraulic Model Training

Consultant shall provide an electronic copy of the model to the City. Consultant shall schedule one day of training for approximately 4 City staff members, to be held at City facilities or Consultant's office, and provide a color copy of the technical reports to each attendee. Consultant shall provide color copies of material presented at the training session to each attendee. Training shall cover, at a minimum, all functions of the water model as created by the various project tasks.

Task 5 – Water System Supply and Demand Forecast

5.1 Water System Demand Forecast

Consultant shall create future water demands for the model based on four scenarios.

- A. Existing Milwaukie Water System + Expected Growth
- B. Scenario A + Dual Interest Area A
- C. Scenario B + Dual Interest Area B
- D. Scenario C + Milwaukie UGMA

Expected growth shall be determined based on land use planning for areas yet to be fully developed and/or supplied. The City shall provide land use planning for build out. See Attachment C for boundaries of dual interest areas and Milwaukie's urban growth management area (UGMA). At a minimum the Consultant shall include the following:

- A. Review existing comprehensive plan and other documents to determine the City's future service area.
- B. Review previous estimates of the per capita demand factors and meter records for selected user categories to update unit demand factors. Compare with data from Clackamas River Water for areas located outside the City's existing service area.
- C. Review and update, if necessary, the previously estimated unaccounted for water use records from the City's customer billing and master meter records if available.

Consultant shall identify most beneficial connection points to the City's water system for Scenarios A-D. Consultant shall modify the model developed for the existing distribution system to include the layout of future system piping and other future facilities for Scenarios A-C. Future demands and fire flows will be added to all appropriate future model junctions. Junctions for Scenario D shall be updated to model future water demands on Milwaukie's existing water system.

5.2 Water System Storage and Supply

Consultant shall evaluate the City's storage and supply capacities to insure that they meet operational and regulatory requirements under the four future water demand scenarios listed in Task 5.1. Consultant shall evaluate alternatives to increase City's storage and supply needs to meet future water demand Scenarios A-C under Task 5.1. Consultant shall identify storage and supply deficiencies in Milwaukie's existing water system under Scenario D.

Task 6 – Distribution System Evaluation

6.1 Establish Design and Evaluation Criteria

Consultant shall produce a technical memorandum with criteria to be used in the evaluation of the distribution system and the design of proposed improvements. The criteria will be based on the latest governing regulatory requirements, general engineering practice, and City Public Works Standards.

6.2 Evaluate Existing Distribution System Capacities.

6.2.1 Existing Distribution System

Consultant shall evaluate the distribution system using the hydraulic model to determine its capacity to deliver water under peak demand conditions as well as under fire flow conditions. The following model scenarios will be run and evaluated using:

- A. Peak Hour Demands (during Maximum Day)
- B. Average Maximum Day Demand Plus Fire Flow (evaluated at fire flow junctions)

Consultant shall review storage and supply capacities to insure that they meet operational and regulatory requirements. All deficiencies discovered in the distribution systems will be identified.

6.2.2 Pressure Zone Breaks

A number of deficiencies exist between the different pressure zones of the City's water distribution system. These deficiencies include missing pressure reducing valves, valves used to separate zone breaks, and water mains left unconnected.

Consultant shall evaluate the distribution system using the hydraulic model and water system mapping to determine locations for pressure reducing valves to separate the pressure zones and eliminating the existing deficiencies. Consultant shall identify projects to install/replace pressure reducing valves.

6.2.3 Abandon Obsolete Water Mains and Transfer Services

For a number years the City installed water mains and for budgetary reasons did not transfer water services to the new main and abandon the old main. These areas that have multiple water mains make it difficult to determine how these water mains are connected.

Consultant shall identify redundant water mains and water services that need to be transferred to a different water main. Consultant shall identify projects to transfer water services and abandon redundant water mains.

Task 7 – System Condition Assessment

Consultant shall develop a database to assess the condition of the City's water system. The database shall separate the City's water system into segments, such as storage tanks, pumps, wells, pressure reducing valves, and water distribution system by street block length (street intersection to street intersection). Consultant shall develop a rating system to apply to the water system segments. The rating system would be used to rank each segment based on highest priority of replacement or repair. The rating system would be a numerical points system based on items such as:

- A. Increase Capacity (Determined by Task 6.2)
- B. Date Until Street Surface Maintenance Program Street Cutting Moratorium Imposed
- C. Existing Deficiencies
 - i. Number of Repairs

- ii. Condition
- iii. Years Left in Expected Life Cycle
- iv. Dangerous Materials (Lead Joint, Asbestos Pipe, etc.)

Consultant shall design database to be clear and simple for City personnel to update on an annual basis. The City would use the database to determine priority for capital maintenance projects for each fiscal year.

Task 8 – Emergency Supply

Consultant shall evaluate the City's water system using the hydraulic model and recommend water system intertie connections for emergency water supply to all adjacent water service providers. Consultant shall analyze and recommend emergency water intertie's that may be necessary between two water service providers through the City's water system, such as City of Portland and Oak Lodge. Consultant shall identify projects to construct recommended water system interties.

Task 9 – Dual Interest Area Water Provider Transfer

Consultant shall research and explain the requirements, regulations, and process of transferring water service responsibilities between water service providers.

Task 10 – Milwaukie Comprehensive Plan Review

Consultant shall evaluate Chapter 5 Transportation/Public Facilities/Energy Conservation of the Milwaukie Comprehensive Plan. Consultant shall recommend changes to the Comprehensive Plan based on the results of the 2010 Water Master Plan. Consultant shall assist City personnel with writing staff reports and providing supporting data for amending the City's Comprehensive Plan.

Task 11 – Water System Capital Improvements Plan

11.1 General

Consultant shall group identified improvements into projects with planning level cost estimates of $\pm 20\%$ accuracy prepared for each project. Consultant shall develop a 20-year Capital Improvement Plan (CIP) for the water system. The improvement projects will be prioritized in order of importance and suggested dates for construction will be assigned.

11.2 Capital Maintenance Plan

Consultant shall identify projects determined as part of Task 7. The projects shall be grouped by anticipated year for construction and the estimated annual costs summarized.

11.3 Capital Growth Plan

Consultant shall identify projects determined as part of Task 5. The projects shall be grouped on two levels, first by the future water demand scenarios A-C of Task 5.1 and second by anticipated year for construction. Consultant shall assume Scenario B completed within the next 10 years and Scenario C completed within the next 20 years. Consultant shall summarize the estimated annual costs.

Task 12 – Staffing Level Analysis

Consultant shall perform an analysis of the City's staffing level. The analysis shall determine the Water Operations, Engineering, and Administration staffing level necessary to adequately maintain and manage the City's water system. Consultant shall draw comparisons from other nearby City's with similar sized water systems, maintenance programs, and population.

Task 13 – System Development Charge and Rate Study

13.1 Water System Development Charge Update

Consultant shall recommend an updated Water System Development Charge (SDC), including improvement, reimbursement, and administrative fees, in accordance with State of Oregon SDC statutes. Consultant shall provide a brief decision matrix and recommendation in deciding which water SDC methodology will best meet the needs of the City. As part of the methodology evaluation, Consultant shall review and evaluate the latest Metro SDC methodology recommendations and determine if any may be of benefit to the City.

Consultant shall compile the Water System Development Charge (SDC) project list, including project costs, using the Water System Capital Improvements Plan of Task 10 and input from City personnel. Consultant shall calculate the improvement fee by determining the cost of the capacity increasing portion of each project.

Consultant shall calculate the amount of eligible unused capacity in the existing water system using City asset information, policy information from the Water Master Plan, and input from City personnel. Consultant shall use the value of the unused water system capacity to calculate the reimbursement fee.

Consultant shall calculate the administrative portion of the Water SDC in accordance with State of Oregon SDC statutes and input from City personnel.

13.2 Water Rate Study

Consultant shall perform a cost of water service study and recommend an updated water utility rate structure that is easy to administer and understand. The recommend rate structure shall be consistent with industry practice for utility rate making in Oregon. The recommend rate structure shall insure that the water utility is fully recovering the cost of providing water services, including analysis of the following factors:

- A. Current and future costs of providing water in accordance with established and anticipated standards and regulations.
- B. Current and future costs of maintenance and operation of the water system.
- C. Projected demands.
- D. Availability of supply.
- E. Funding of capital growth projects.
- F. Funding of capital maintenance projects.
- G. Funding of water system security projects identified by City's Water System Vulnerability Assessment.
- H. Funding of cross-connection program.
- I. Impact of current and future environmental regulations and water conservation elements.
- J. Adequate reserves for depreciation, emergencies, catastrophes, and other appropriate purposes.
- K. Other impacts as identified.

Consultant shall summarize the impacts of the recommended rate structure and proposed rate on rate payers. The summary shall include at a minimum the following:

- A. Analysis of the benefits of the recommended rate changes weighed against the financial impacts to the rate payers.
- B. Justification for any special classes of customers under the recommended rate structure.

- C. Assessment of recommended water rates equity for all types of property ownership, including multi-family units.

The recommended rate structure shall provide clear and direct identification of annual revenues appropriate to fund operating activities, maintenance, and infrastructure improvements. The recommended rate structure shall be compatible with the City's electronic billing system and include an easy to use electronic model, in either Microsoft Excel or Access, to be used by the City for future rate setting. Consultant shall compare the proposed new rates to other utilities providing water services in the region.

Task 14 – Water System Master Plan

14.1 Draft Water System Master Plan

Upon completion of Tasks 1-12, Consultant shall submit 3 printed copies and 1 digital copy in PDF format of a draft Water System Master Plan report to the City for review and comment. At a minimum, the report shall include the following:

- A. An Executive Summary.
- B. Colored maps that are clear, easy to understand, and of professional quality of the City's water system, identified deficiencies, and proposed improvements.
- C. Summary of existing water system.
- D. Population projections and water demand summary.
- E. Documentation of modeling methodologies and assumptions.
- F. Technical information, analysis, and discussion of results for each task making use of charts, graphs, and figures of professional quality to clearly and efficiently convey the information, findings, and conclusions.
- G. Justification for recommend work to be accomplished.
- H. System Condition Assessment
- I. Water System Capital Improvements Plan
- J. System Development Charge and Utility Rate Study
- K. Other supporting documentation.

Consultant shall prepare the Water System Master Plan and associated materials in accordance with City standards for style and grammar. The Water System Master Plan and associated materials shall be independently reviewed for conformance with these standards prior to submittal.

Consultant shall provide draft version of Water System Condition Assessment Database and Water Utility Rate Study Electronic Model to the City for review and comment.

Consultant shall incorporate City review and comments of the draft materials and resubmit for additional reviews in accordance with Task 13.1 until final City approval of the draft materials. Re-submittal of complete document for secondary review is not required. Edited materials may be submitted as replacement pages.

14.2 Final Water System Master Plan

Upon City approval of the draft materials, Consultant shall produce final report and submit 6 printed copies and 1 digital copy in PDF format. Consultant shall provide a final electronic copy of the Hydraulic Model, Water System Condition Assessment Database, and Water Utility Rate Study Model. Consultant shall provide all Water System Master Plan maps in electronic format compatible with the City's GIS system.

14.3 Public Meetings

Consultant shall plan on attending the following meetings to present, discuss, and answer questions regarding the Water System Master Plan.

- | | |
|--|--|
| A. Public Open House | 1 Evening Meeting |
| B. Citizens Utility Advisory Board (CUAB)
Meet 1 st Wednesday of Every Month
(6:00 pm – 8:00 pm) | 2 Evening Meetings |
| C. Planning Commission
Meet 2 nd & 4 th Tuesday of Every Month
(6:30 pm – 10:00 pm) | 1 Evening Work Session
2 Evening Public Hearings |
| D. City Council
Meet 1 st & 3 rd Tuesday of Every Month
Work Session (5:30 pm – 7:00 pm)
Regular Session (7:00 pm – 10:00 pm) | 2 Evening Work Sessions
2 Evening Public Hearings |



MILWAUKIE

Dogwood City of the West

To: Planning Commission

From: Katie Mangle, Planning Director *KM*
 Susan P. Shanks, Senior Planner
 Ryan Marquardt, Associate Planner

Date: November 2, 2010 for November 9, 2010 Worksession

Subject: Land Use and Development Review Process Tune-Up
 Code Amendment Project Briefing #6

ACTION REQUESTED

None. This is the last in a series of informational briefings on proposed code amendments to improve the City's land use and development review procedures.

BACKGROUND INFORMATION

This grant-funded project has been an opportunity for the City to address some longstanding and serious problems with the City's land use and development procedures. Most of the City's procedures are located in the Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code, but some are located in the Comprehensive Plan. As a result, this project includes both zoning code and comprehensive plan text amendments. It also includes a complete restructuring of Title 19 to provide a better vehicle for implementing the proposed improvements to the City's review procedures.

As a reminder, the goal of this project is to create a smart, flexible, and local code that implements the community's vision for Milwaukie (as outlined in the Comprehensive Plan) through efficient and effective review procedures that protect property owner rights and provide meaningful public involvement. Staff defines a smart, flexible, local code as follows:

Smart. A smart code is one that contains everything it should and nothing it shouldn't. Its structure and procedures are easy to understand and follow, serving to help property owners and developers effectively manage their development projects.

Flexible. A flexible code is one that enables the City to meet all of its legal requirements for processing applications while not hampering its ability to maintain high service standards and facilitate quality development.

Local. A local code is one that provides for meaningful public involvement in a way that reflects Milwaukie's small-town and neighborhood-based character.

A. History of Prior Actions and Discussions

- **October 2010:** Briefing #5 on Land Use and Development Review Process Tune-Up

Project, with a focus on conditional uses, amendments to maps and ordinances, and development review.

- **September 2010:** Briefing #4 on Land Use and Development Review Process Tune-Up Project, with a focus on variances and nonconforming situations.
- **August 2010:** Briefing #3 on Land Use and Development Review Process Tune-Up Project (formerly Review Procedures Code Amendment Project), with a focus on variances and nonconforming situations.
- **July 2010:** Briefing #2 on Review Procedures Code Amendment Project, with a focus on time limits and extensions of land use approvals.
- **May 2010:** Briefing #1 on Review Procedures Code Amendment Project, with a focus on project goals and the City's code history and current review procedures.
- **March 2010:** Staff provided the Commission with a copy of the intergovernmental agreement between the City and the State of Oregon that commits the City to prepare draft code amendments based on priorities that were identified in the 2009 Smart Growth Code Assessment Final Report.
- **October 2009:** Staff presented the 2009 Smart Growth Code Assessment Final Report to Council. Council concurred with the code amendment priorities identified in the report and requested that staff move forward with the next phase of the project.
- **September 2009:** Design and Landmarks Committee held a worksession to discuss the residential design standards element of the code assessment project.
- **August 2009:** Planning Commission reviewed and provided concurrence on the Action Plan presented in the 2009 Smart Growth Code Assessment Final Report.
- **August 2009:** Planning Commission held a worksession to discuss the consultant's code assessment findings prepared during Phase I of the Smart Growth Code Assistance project.
- **July 2009:** Planning Commission held a worksession to discuss the consultant's code assessment findings prepared during Phase I of the Smart Growth Code Assistance project.

B. Discussion Items

Staff has prepared draft code amendments for the following code sections with input from the Planning Commission.

- Conditional Uses (existing Chapter 19.600)
- Variances (existing Chapter 19.700)
- Nonconforming Uses and Development (existing Chapter 19.800)
- Amendments to Maps and Ordinances (existing Chapter 19.900)
- Review Procedures (existing Chapter 19.1000)
- Development Review (new code section)

Staff has also prepared draft code amendments for Chapters 1 and 2 of the Comprehensive Plan to reflect best practices and the changes being proposed to the City's review procedures. Additionally, staff has prepared draft outlines for two new procedures and the City's existing code interpretation and determination provisions.

- Extensions to Expiring Approvals
- Modifications to Existing Approvals
- Code Interpretations and Determinations

The two new procedures would fill existing gaps in the City's land use and development review process. Many other jurisdictions in the region have similar procedures in their codes for dealing with approval modifications and extensions. The proposed revisions to the City's code interpretation and determination provisions are minor in nature and are intended to clarify and improve the usefulness of these sections.

Staff will provide an overview of all proposed amendments at the November 9 worksession (with particular attention paid to the nonconforming use amortization proposal) and will identify any outstanding policy questions for Planning Commission discussion.

C. Next Steps

Staff plans to create a third and final set of draft amendments based on direction from the Planning Commission for broader public distribution in mid-December, with the first public hearing on this package of amendments tentatively scheduled for January 25, 2011.

ATTACHMENTS

1. Conditional Uses Draft Amendments
2. Variances Draft Amendments
3. Amendments to Maps and Ordinance Draft Amendments
4. Review Procedures Draft Amendments
5. Comprehensive Plan Draft Amendments
6. Development Review Draft Amendments
7. Extensions to Expiring Approvals Draft Outline
8. Modifications to Existing Approvals Draft Outline
9. Code Interpretations and Determinations Draft Outline
10. Nonconforming Uses and Development Draft Amendments

Conditional Uses

November 9, 2010

Summary of Key Policy Items in the Proposed Amendments:**19.905.3 Review Process**

The current proposal establishes new distinctions between establishment of a conditional use, major modifications to an existing conditional use, and minor modifications to an existing conditional use. The distinct review types are analogous to the existing review types for Community Service Uses.

19.905.5 Conditions of Approval

This section authorizes the decision maker(s) to impose conditions that are necessary to make a conditional use compatible with its surroundings. The list is intentionally broad so that code users understand that consideration of a broad range of factors is appropriate. This basic policy is captured in existing Section 19.601. That section has text to suggest that a broad range of conditions may be imposed, but it has a much shorter list of examples.

19.905.7 Review of Existing Conditional Use Permits

These are revisions of existing procedures within the code for handling conditional uses that are out of compliance with their approved operation or are having unanticipated impacts. The general approach in this subsection is to notify the conditional use operator and allow them to voluntarily correct the situation. The issue can be elevated to Planning Commission review if the owner does not correct the problem or if the correction is ineffective.

19.905.8 De Facto Conditional Use Status and Loss of Conditional Use Status

This section expands upon the existing code that grants conditional uses status to uses that are listed as conditional uses in our current code that are legal and did not undergo conditional use review.

The proposed code includes new provisions dealing with the expiration of conditional use status. Under the current code, conditional uses do not have an expiration date if the use changes or is discontinued. The proposed code would automatically remove conditional use status for properties that undergo a change in use. It would also remove conditional use status for properties where the use is discontinued for 3 years. The discontinuation clause applies only to non-residential conditional uses that receive conditional use approval or become de facto conditional uses after the proposed regulations are enacted.

19.905 Conditional Uses**19.905.1 Purpose**

The purpose of the conditional use regulations is to evaluate the establishment of certain uses that may be appropriately located in some zoning districts, but that may only be permitted if appropriate for the specific site on which they are proposed.

Conditional uses are not allowed outright. Although they may provide needed services or functions in the community, they are subject to conditional use review because they may change the character of an area or adversely impact the environment, public facilities, or adjacent properties. The conditional use review process allows for the establishment of conditional uses when they have minimal impacts or when identified impacts can be mitigated through conditions of approval. The review process also allows for denial when concerns cannot be resolved or impacts cannot be mitigated.

Approval of a conditional use shall not constitute a zone change and shall be granted only for the specific use requested subject to such modifications, conditions, and restrictions as may be deemed appropriate by the review authority.

19.905.2 Applicability

- A. Section 19.905 applies to the establishment of a use identified as a conditional use in the base zones in Chapter 19.300 or overlay zones in Chapter 19.400 that are applicable to the property on which the use is proposed.
- B. Section 19.905 applies to the major or minor modification of existing conditional uses.
- C. Section 19.905 does not apply to major or minor modification of uses that received conditional use approval where the use is allowed outright by the base zones and overlay zones which currently apply to the property containing the use.

19.905.3 Review Process

- A. Establishment of a new conditional use or major modification of an existing conditional use shall be reviewed pursuant to Section 19.1004, Type III Review.
- B. Minor modification of an existing conditional use shall be reviewed pursuant to Section 19.1002, Type I Review.

19.905.4 Approval Criteria

- A. Establishment of a new conditional use or the major modification of an existing conditional use may be approved if the following criteria are met.
 - 1. The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.
 - 2. The operating and physical characteristics of the proposed use will be reasonably compatible with and have minimal impact on nearby uses.
 - 3. All impacts have been identified and will be mitigated to the extent practicable.
 - 4. The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by outright allowed uses at the proposed location.
 - 5. The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones, and the standards in Section 19.905.

6. The proposed use will comply with all applicable Comprehensive Plan policies related to the proposed use.
 7. Adequate public facilities will be available to serve the proposed use at the time of occupancy.
- B. Minor modification of an existing conditional use may be approved if the following criteria are met.
1. The proposed modification will not significantly increase the intensity of the use at this location.
 2. The proposed modification will comply with all applicable development standards and requirements of the base zone, any overlay zones, and the standards in Section 19.905.
 3. The proposed modification will not negatively impact nearby uses, protected natural features, or public facilities any more than what was identified in the original conditional use approval.
 4. The proposed modification will comply with any conditions of approval from the original conditional use approval.

19.905.5 Conditions of Approval

The Planning Commission, or Planning Director in the case of minor modifications, may impose conditions of approval that are suitable and necessary to assure compatibility of the proposed use with other uses in the area and minimize and mitigate potential adverse impacts caused by the proposed use.

Conditions of approval may include, but are not limited to, the following aspects of the proposed use.

- A. Limiting the hours, days, place, and manner of operation.
- B. Requiring structure and site design features that minimize environmental impacts such as those caused by noise, vibration, air pollution, glare, odor, and dust.
- C. Requiring additional front, rear, or side yard width.
- D. Limiting building height, size, or location or limiting lot coverage.
- E. Limiting or otherwise designating the size, number, or location of vehicle access points from the street.
- F. Requiring additional landscaping or screening of off-street parking and loading areas.
- G. Limiting or otherwise designating the location, intensity, and shielding of outdoor lighting.
- H. Requiring screening or landscaping for the protection of surrounding properties.
- I. Requiring and designating the size, height, location, and materials for fences.
- J. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, and drainage areas.

19.905.6 Conditional Use Permit

- A. The City will issue a conditional use permit upon the approval for the establishment of a conditional use or the approval of the major modification of an existing conditional use. The

Proposed Code Amendment

Planning Director may decide if it is necessary to revise an existing conditional use permit after approval of a minor modification.

- B. The conditional use permit shall include the following information.
 - 1. A description of the use that has been approved by the City.
 - 2. Restrictions and/or conditions of approval placed upon the use.
 - 3. Ongoing responsibilities required for the operation of the conditional use.
 - 4. Allowance for the transfer of rights and responsibilities upon change in ownership of either the use or the property containing the use.
 - 5. Procedures for review, revisions, and suspension of the conditional use permit.
- C. The applicant must record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit.
- D. A conditional use permit is valid unless one of the following occurs: (1) a change in use occurs, (2) the permit is suspended per the procedures in Subsection 19.905.6, or (3) the use is discontinued as described in Subsection 19.905.8. A conditional use permit is not affected by a change in ownership of the use or the property containing the use.
- E. Compliance with the terms and conditions of the conditional use permit is required on an ongoing basis.
- F. The notice of decision, Planning Commission minutes, and other city records shall constitute the conditional use permit for conditional uses that were approved prior to the effective date of this ordinance.

19.905.7 Review of Existing Conditional Use Permits

- A. The Planning Director may evaluate the operation of a conditional use for compliance with the conditional use permit if it appears the terms and conditions of the permit are being violated or complaints are received regarding the use. An observation or complaint must be based on one of the following occurrences.
 - 1. Violation of any applicable development standard or requirement that pertains to the conditional use.
 - 2. Failure to operate as approved or failure to satisfy a condition of approval from the original conditional use approval.
 - 3. Incidents that are perceived to be a direct result of the conditional use and that may be detrimental to the health, safety, property, or general welfare of the public.
- B. If the Planning Director finds that the conditional use is noncompliant or is having unanticipated impacts that are detrimental to the health, safety, property, or general welfare of the public, the Planning Director shall require the owner and/or operator to resolve the issue within a reasonable period of time, as determined by the Planning Director. If it is beyond the ability of the owner and/or operator to resolve the issue, the matter shall be processed per Subsection 19.905.7.C.
- C. If the owner and/or operator of the conditional use cannot or does not permanently correct the issue, the matter shall be heard by the Planning Commission to consider the modification, suspension, or revocation of the conditional use permit. The review shall follow the procedures of Section 19.1004, Type III review. The owner and/or operator shall not be charged a fee for this review.

The Planning Commission may take the following actions in consideration of the conditional use permit.

1. Suspend the permit and require the cessation of the conditional use until the issue is resolved. Upon suspension of the conditional use permit, the Planning Commission shall set a future meeting date to consider reinstating the permit. A suspended permit may be reinstated when, in the judgment of the Planning Commission, the issue has been resolved.
2. Modify the conditional use permit to address the circumstance(s) that gave rise to the issue. Modifications to the conditional use permit shall be based on factors relevant to the approval criteria for conditional uses in Subsection 19.905.3. The Planning Commission may opt to suspend the permit per Subsection 19.905.7.C.1 until compliance with the modified conditional use permit is achieved.
3. Revoke the conditional use permit. Revocation of a conditional use permit shall only occur in either of the following circumstances.
 - a. The nature of the conditional use is such that its impacts cannot be minimized or mitigated to be consistent with the conditional use approval criteria.
 - b. The property owner and/or operator of the conditional use failed to comply with the terms and/or conditions of the original or modified conditional use permit.

19.905.8 De Facto Conditional Use Status and Loss of Conditional Use Status

- A. A legally established use currently identified in the code as a conditional use is a de facto conditional use, rather than a nonconforming use, even if: (1) it had previously been identified as an outright allowed use or nonconforming use and/or (2) it had not previously undergone conditional use review. A de facto conditional use does not require a conditional use permit. Modifications to a de facto conditional use shall be evaluated per Subsections 19.905.3 and 19.905.4.
- B. Conditional uses and de facto conditional uses may lose their conditional use status if the use is discontinued. A conditional use or de facto conditional use automatically loses its conditional use status under either of the following situations. A dispute about these situations shall be resolved by the Planning Director pursuant to Section 19.909.
 1. A conditional use or de facto conditional use undergoes a change in use. Changes in use to an outright allowed use results in the loss of any conditional use status. Changes in use to another conditionally allowed use results in the loss of the conditional use status only for the prior use.
 2. The conditional use or de facto conditional use had been discontinued for more than three years. This discontinuation applies only to properties that:
 - a. Received conditional use approval or became de facto conditional uses following the effective date of Ordinance #_____, and,
 - b. Were not single family or multifamily conditional uses or de facto conditional uses.

19.905.9 STANDARDS GOVERNING CONDITIONAL USES

A conditional use shall comply with the standards of the zone in which it is located, except as these standards have been modified by the Planning Commission when authorizing the conditional use and as otherwise modified within this subsection.

- A. Yards

Proposed Code Amendment

In a residential zone, yard width shall be equal to at least two-thirds of the height of the principal structure. In any zone, additional yard requirements may be imposed.

B. Access to Property and Building Openings

The City may limit or prohibit vehicle access from a conditional use to a residential street, and it may limit or prohibit building openings within 50 feet of residential property in a residential zone if the openings will cause glare or excessive noise or will otherwise adversely affect adjacent residential property.

C. Surface Mining

In considering a conditional use application for surface mining, the following minimum requirements shall apply:

1. Open pit and gravel excavating or processing shall not be permitted nearer than 50 feet to the boundary of an adjoining property line, unless written consent of the owner of such property is first obtained. Excavating or processing shall not be permitted closer than 30 feet to the right-of-way line of an existing or platted street or an existing public utility right-of-way.
2. Production from an open pit or the removal of sand and gravel shall not leave a slope exceeding 1 foot horizontal for 1 foot vertical.
3. An open pit or sand and gravel operation shall be enclosed by a fence suitable to prevent unauthorized access.
4. A rock crusher, washer, or sorter shall not be located nearer than 500 feet to a residential or commercial zone. Surface mining equipment and necessary access roads shall be constructed, maintained, and operated in such a manner as to eliminate, as far as is practicable, noise, vibration, or dust which is injurious or substantially annoying to persons living in the vicinity.

D. Junk or Wrecking Yard

In considering a conditional use application for a junk or wrecking yard, the Planning Commission shall require that it be enclosed by a sight-obscuring fence not less than 6 feet high.

E. High-Impact Commercial Use

In considering a conditional use application for a high-impact commercial use, the Planning Commission shall consider the following:

1. Nearness to dwellings, churches, hospitals, or other uses which require a quiet environment;
2. Building entrances, lighting, exterior signs, and other features which could generate or be conducive to noise or other disturbance for adjoining uses;
3. Parking vehicles and pedestrian access and circulation could contribute to noise or attract habitual assembly or unruly persons;
4. Hours of operation.
5. 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 ensure that such establishments do not become unduly or unnecessarily disruptive.

F. Single-Family Attached Dwellings

In considering a conditional use application for single-family attached dwellings, the Planning Commission shall consider the following:

1. Whether a structure of a similar type is within 200 feet;
2. Relationship to neighboring uses;
3. Street access;
4. Terrain of the site.

G. Multifamily Condominium and Apartment Dwellings

In considering a conditional use application for multifamily condominium and apartment dwellings, the Planning Commission shall consider the following:

1. Relationship to neighboring uses;
2. Street access; and
3. Terrain of the site.

H. Senior and Retirement Housing

In considering a conditional use application for senior and retirement housing the Planning Commission shall consider the following:

1. Pedestrian access to transit;
2. Pedestrian access to convenience facilities such as grocery store, pharmacy, laundromat, park and open space, and senior activity center;
3. Pedestrian access to banking, churches, hospitals, and restaurants;
4. Quality of project as a living environment for residents;
5. Minimizing impact on the surrounding area.

The Planning Commission may recommend to the City Council an increase in density to as much as that permitted by the next higher zone. The City Council shall make the final decision on density increase.

An applicant is required to submit materials and the Planning Commission shall attach conditions which will ensure that the special nature of the housing, and groups to be served, are clearly defined and maintained in perpetuity. Also a project is required to meet the definition for this type of housing defined in Section 19.103.

DRAFT SECTION 19.911
VARIANCES

November 9, 2010

Overview of Key Changes

Variances are meant to provide relief from specific code provisions that have the unintended effect of preventing reasonable development or imposing undue hardship. The current proposal replaces the City's existing Variances, Exceptions, and Home Improvement Exceptions chapter (Chapter 19.700) in its entirety with the intention of fixing the following problems:

- The existing code does not contain a purpose statement for variances. Absent such a statement, the approval criteria set the tone for implementing this section of code.
- The existing approval criteria for variances are extremely narrow and rigid and allow for limited discretion even when being reviewed by a discretionary review body. They do not allow variances that would result in better projects and/or have undiscernible impacts, and they have the effect of not allowing small adjustments to standards on any but the most complex sites.
- Type II and Type III variances currently have the same approval criteria, which defeats the purpose of having two kinds of variances.
- The existing home improvement exception standards are unclear and overly complex.

The current proposal addresses these problems by:

- Adding a purpose statement.
- Allowing variances that improve the function or design of a project through a Type III review process.
- Allowing small variances that are not detrimental to surrounding properties through a Type II review process.
- Creating new approval criteria for both types of variances that allow for an appropriate amount of discretion based on the associated level of review.
- Folding the existing home improvement exception provisions into the new variance approval criteria and allowing the same types of requests through the new streamlined variance approach.

In addition to these proposed changes, the current proposal also clarifies which standards are eligible for variances and adds a provision that the existing use exceptions process cannot be used to allow a use that is prohibited by the underlying base zone. The current proposal does not change the existing use exception approval criteria but for some very minor editing for clarity.

19.911 VARIANCES**19.911.1 PURPOSE**

Variances provide relief from specific code provisions that have the unintended effect of preventing reasonable development or imposing undue hardship. Variances are intended to provide some flexibility while ensuring that the intent of each development standard is met. Variances may be granted for the purpose of fostering reinvestment in existing buildings, allowing for creative infill development solutions, avoiding environmental impacts, and/or precluding an economic taking of property. Variances shall not be granted that would be detrimental to public health, safety, or welfare.

19.911.2 APPLICABILITY**A. Eligible Variances**

A variance may be requested to any standard or regulation in Titles 14, 17, and 19 of the Milwaukie Municipal Code, or any other portion of the Milwaukie Municipal Code that constitutes a land use regulation per ORS 197.015.

B. Ineligible Variances

A variance may not be requested in the following situations:

1. A variance to any restrictions on uses or development which contain the word "prohibited".
2. A variance to a required review type.
3. A variance to the steps of a procedure.
4. A variance to a definition.
5. A variance that would increase the maximum permitted density for a residential zone.
6. A variance to justify or allow a Building Code violation.
7. A variance that would allow a use not outright allowed by the base zone. Requests of this nature may be allowed through the use exception process described in Subsection 19.911.5 or the nonconforming use alteration allowance described in Subsection 19.8XX.X.

C. Exceptions

Where other sections of this code specifically provide for exceptions or modifications to standards, a variance application is not required.

19.911.3 REVIEW PROCESS**A. General Provisions**

1. Variance applications shall be reviewed at one of two levels, Type II or Type III, depending upon the nature and scope of the variance request and the discretion involved in the decision-making process.
2. Variance applications may be combined with and reviewed concurrently with other land use applications.

3. One variance application may include up to three variance requests. Additional variance requests must be made on a separate variance application.

B. Type II Variances

Type II variances allow for limited variations to numerical standards. The following types of variance requests shall be evaluated through a Type II review process pursuant to Section 19.1005.

1. A variance of up to 40 percent variance to side yard setback standards.
2. A variance of up to 25 percent variance to front, rear and street side setback standards.
3. A variance of up to 10 percent variance of lot coverage and minimum vegetation standards.
4. A variance of up to 10 percent variance to lot width and depth standards.
5. A variance of up to 10 percent variance to lot frontage standard.

C. Type III Variances

Type III variances allow for larger or more complex variations to standards that require additional discretion and warrant a public hearing consistent with the Type III review process. Any variance request that is not specifically listed as a Type II Variance per Subsection 19.911.3.B shall be evaluated through a Type III review process pursuant to Section 19.1006.

19.911.4 APPROVAL CRITERIA

A. Type II Variances

An application for a Type II Variance shall be approved when all of the following criteria have been met:

1. The proposed variance, or cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.
2. The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.
3. Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance an existing, building or site design.
4. Impacts from the proposed variance will be mitigated to the extent practicable.

B. Type III Variances

An application for a Type III Variance shall be approved when either all of the discretionary relief criteria or all of the economic hardship criteria listed below have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

1. Discretionary relief criteria
 - a. Other alternatives were considered and the proposed variance was determined to be the best approach based on one or more of the following:

Proposed Code Amendment

- (1) The proposed variance avoids or minimizes impacts to surrounding properties.
 - (2) The proposed variance has desirable public benefits.
 - (3) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.
- b. Impacts from the proposed variance will be mitigated to the extent practicable.
- 2. Economic hardship criteria
 - a. Due to unusual site characteristics and/or other physical conditions on or near the site, the variance is necessary to allow reasonable economic use of the property.
 - b. The proposed variance is the minimum variance necessary to allow for reasonable economic use of the property.
 - c. Impacts from the proposed variance will be mitigated to the extent practicable.

19.911.5 USE EXCEPTIONS
A. Applicability

Use exceptions are a type of variance intended to allow uses that are not outright allowed in the base zones. Use exceptions shall not be used to allow a use that is specifically prohibited by the base zone.

B. Review Process

Use exceptions shall be evaluated through a Type III review process pursuant to Section 19.1006.

C. Approval Criteria

The Planning Commission may authorize exceptions to uses established by this title upon a determination that all of the following circumstances exist:

- 1. Exceptional circumstances apply to the property that do not generally apply to other properties in the same zone, resulting from circumstances over which the applicant has no control.
- 2. The proposed use would not be substantially detrimental to the interests of neighboring, but not necessarily adjacent, owners.
- 3. Substantial justice to all owners would be afforded within the purposes of this title.
- 4. There exists no other practical use of the property under the provisions of this title.
- 5. Economic hardship shall not be a primary basis for allowance of a use exception nor shall circumstances of which the applicant had prior knowledge be considered upon application.

Amendments to Maps and Ordinances

November 9, 2010

Summary of Key Policy Items in the Proposed Amendments:**19.913.3.B:**

The Comprehensive Plan amendment approval criteria are essentially the same criteria that exist in Chapter 2 of the Comprehensive Plan. Some minor modifications have been made to make them easier to apply during the hearings process.

19.913.4.B:

The process and criteria for zoning text changes are fairly simple. The proposed changes remove the approval criteria from existing Section 19.905 that seemed more related to site specific zone map amendments.

19.913.5.A:

The process for reviewing amendments to the Zoning Map is proposed to change. Zoning map amendments may be treated differently depending on the size of the area included in the proposal. Changes that affect large geographic areas are legislative in nature in that they are policy decisions. Changes to smaller areas are quasi-judicial in nature in that they apply existing policies and procedures to individual circumstances. Legally, there is no definitive threshold for what constitutes a legislative zone change versus a quasi-judicial zone change. The review process in the proposed code reflects this uncertainty but gives some guidance, and defers to the City Attorney to make the decision about which process is appropriate.

19.913.5.B:

The approval criteria have been modified to focus less on the specifics of what development might occur within a zone and more on the general compatibility of the proposed zone in relation to existing surrounding zones. It is presumed that the development that will occur will comply with the relevant standards and criteria imposed by the zone.

19.913 AMENDMENTS**19.913.1 PURPOSE**

This section establishes the process for amending the City's Comprehensive Plan and land use regulations within the Milwaukie Municipal Code. The approval process related to Comprehensive Plan amendments is intended to ensure compliance with State laws and administrative rules, including the 19 statewide land use planning goals and the Metro Urban Growth Management Functional Plan, Chapter 3.07, Title III of the Metro Code. The approval process related to land use amendments is intended to ensure compliance with the Comprehensive Plan.

The goals and policies of the Comprehensive Plan are implemented, in part, through the land use regulations of the Milwaukie Municipal Code. The sections of the Municipal Code that most directly related to implementation of the Comprehensive Plan are Title 14, Signs; Title 17, Land Division; and Title 19, Zoning.

19.913.2 APPLICABILITY

The requirements of Section 19.913 apply to the amendments described below.

- A. Amendments to add, modify, or delete the text of the Milwaukie Comprehensive Plan or its ancillary documents.
- B. Amendments to add, modify, or delete the text of Titles 14, 17, and 19 of the Milwaukie Municipal Code, or any other portion of the Milwaukie Municipal Code that constitutes a land use regulation per ORS 197.015.
- C. Amendments to change the maps of the Milwaukie Comprehensive Plan, including maps within ancillary documents. Changes to these maps resulting from actions taken by Section 19.1104, Expedited Process, are exempt from the requirements of Section 19.913.
- D. Amendments to change the "Zoning Map of Milwaukie, Oregon", which is the map established by Section 19.203. Changes to this map resulting from actions taken by Section 19.422.17, Boundary Verification and Map Administration, and Section 19.1104, Expedited Process, are exempt from the requirements of Section 19.913.

19.913.3 COMPREHENSIVE PLAN AMENDMENTS

Changes to the Milwaukie Comprehensive Plan shall be called Comprehensive Plan Amendments.

A. Review Process

Changes to the Milwaukie Comprehensive Plan described by Subsection 19.913.2.A or C shall be processed as a Type IV Review per the procedures of Section 19.1004.

B. Approval Criteria

Changes to the Milwaukie Comprehensive Plan shall be approved if the following criteria are met.

1. The proposed amendment is in conformance with the Comprehensive Plan.
2. The proposed amendment is in the public interest with regard to neighborhood or community conditions, or corrects a mistake or inconsistency in the Comprehensive Plan or Land Use map.
3. The public need is best satisfied by this particular proposed amendment.

4. The proposed amendment is in conformance with relevant State Statutes and Administrative Rules, such as the Statewide Planning Goals and Transportation Planning Rule.
5. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

19.913.4 MUNICIPAL CODE AMENDMENTS

Changes to the text of land use regulations within the Milwaukie Municipal Code shall be called Zoning Text Amendments, regardless of the individual Titles involved.

A. Review Process

Changes to Title 14, Title 17, or Title 19 of the Milwaukie Municipal Code, or any land use regulation as defined by ORS 197.015, that are described by Subsection 19.913.2.B shall be processed as a Type IV Review per the procedures of Section 19.1004.

B. Approval Criteria

Changes to the Milwaukie Municipal Code described by Subsection 19.913.2.B shall be approved if the following criteria are met.

1. The proposed amendment is consistent with other provisions of the Milwaukie Municipal Code.
2. The proposed amendment is consistent with the Comprehensive Plan.
3. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
4. The proposed amendment is consistent with relevant federal regulations.

19.913.5 ZONING MAP AMENDMENTS

Changes to the Zoning Map of Milwaukie, Oregon shall be called Zoning Map Amendments.

A. Review Process

1. Changes to the Zoning Map described in Subsection 19.913.2.D may either be processed as a Type III Review per Section 19.1003 or a Type IV review per Section 19.1004. The City Attorney shall have the authority to determine the appropriate review process for each individual Zoning Map Amendment. This decision is not a land use decision per ORS 197.015 and is not subject to appeal.

Generally, Zoning Map Amendments that affect 5 or more property owners or encompass more than 2 acres of land should be considered legislative in nature, and subject to Type IV Review. Zoning Map Amendments that involve fewer property owners and encompass a smaller area of land should be considered quasi-judicial in nature, and subject to Type III review.

2. Changes that affect both the Zoning Map and text of Titles 14, 17, and 19, or other land use regulation of the Milwaukie Municipal Code shall be processed as a Type IV Review per the procedures of Section 19.1004. These changes are subject to the approval criteria of Subsections 19.913.4.B and 19.913.5.B.

B. Approval Criteria

Changes to the Zoning Map of Milwaukie, Oregon shall be approved if the following criteria are met.

Proposed Code Amendment

1. The proposed amendment is compatible with the surrounding area based on the following factors.
 - a. Site location and character of the area.
 - b. The predominant land use pattern and density of the area.
 - c. Expected changes in the development pattern for the area.
 - d. The need for uses allowed by the proposed zone amendment.
 - e. The availability of suitable alternative areas of the same or similar zoning designation.
2. The subject property and adjacent properties are presently provided with adequate public facilities, services, and transportation networks to support the use, or such facilities, services, and transportation networks are proposed or required as a condition of approval.
3. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.
4. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan.
5. The proposed amendment is consistent with the Comprehensive Plan goal, policies, and Land Use map.
6. The proposed amendment complies with the state Transportation Planning Rule.

C. Conditions of Approval

Conditions of approval may be applied to zoning map amendments for purposes of fulfilling identified need for public facilities and/or meeting applicable regional, State, or federal regulations. Conditions of approval may include actual construction of facilities or a performance contract, bond, or escrow account to assure installation of public facilities to specified standards.

D. Modification of Official Zoning Map

For zoning map amendments not involving conditions of approval, the Zoning Map shall be modified when the adopting ordinance goes into effect. For zoning map amendments involving conditions of approval, the Zoning Map shall not be modified until all conditions of approval are satisfied.

E. Revocation

If conditions of approval are not met within 2 years of ordinance adoption, the Planning Commission shall hold a public hearing to consider the revocation of the approved zoning. This review shall follow the procedures of Subsection 19.1011.3 Minor Quasi-Judicial Review. The Planning Commission may also, upon determination that the applicant is making satisfactory progress towards completing conditions of approval, grant a one-time extension not to exceed a maximum of 2 years.

DRAFT CHAPTER 19.1000
REVIEW PROCEDURES AND ADMINISTRATION

November 9, 2010

Overview of Key Changes

Review procedures provide the basic framework for how the City conducts land use and development permit review. They determine what kinds of projects trigger land use review, who receives notices about hearings and decisions, when the City has to make a land use decision, and who makes the final decision (e.g. Planning Director, Planning Commission, or City Council).

The intent of the proposed amendments is to clarify and streamline the City's review procedures and ensure consistency with State statutes. The current proposal replaces the City's existing Administrative Provisions chapter (Chapter 19.1000) in its entirety.

The City currently has five types of land use reviews, namely: Type I, Type II, Minor Quasi-judicial, Major Quasi-judicial, and Legislative. The current proposal eliminates the distinction between major and minor quasi-judicial and renames the review types as follows:

Type I Review

(Administrative review process decided by Planning Director)

Type II Review

(Administrative review process with public notice decided by Planning Director)

Type III Review

(Quasi-judicial review process with public notice and hearing decided by Planning Commission)

Type IV Review

(Legislative review process with public notice and hearing decided by City Council)

The following is a summary of other key changes being proposed:

Section 19.1001 General Provisions

- Provides for the automatic expiration of approved land use decisions that have not been utilized after a specified time period.

Section 19.1002 Preapplication Conference

- Clarifies which types of land use reviews require a preapplication conference.

Section 19.1003 Application Submittal

- Clarifies how and when an applicant may modify a land use application currently under review by the City.

Section 19.1005 Type II Review

- Requires applicant to post sign on subject property with development proposal

information.

- Codifies staff's current practice of referring applications to Neighborhood District Associations for review and comment.
- Eliminates ability of the public, Planning Director, and/or Design and Landmarks Committee to elevate an application to the Planning Commission for a hearing but continues to allow applicant or aggrieved party to appeal the application to the Planning Commission for a hearing.
- Eliminates tentative notice of decision requirement to streamline review of Type II applications. Provides notice of application submittal in lieu of tentative notice of decision, effectively maintaining the same level of opportunity for public comment, notice of decision, and appeal.

Section 19.1006 Type III Review

- Eliminates newspaper notice requirement. (*Current proposal needs to be updated to reflect the elimination of this requirement.*)
- Removes language about the Design and Landmarks Committee (DLC) making recommendations to the Planning Commission in anticipation of the DLC becoming a more advisory body.
- Codifies staff's current practice of referring applications to Neighborhood District Associations for review and comment.

Section 19.1007 Type IV Review

- Clarifies that any person, organization, or governmental body can initiate a legislative application.
- Requires a public hearing to be held within 180 days of a complete application.
- Eliminates newspaper notice requirement. (*Current proposal needs to be updated to reflect the elimination of this requirement and to include other kinds of noticing requirements for site-specific and policy-based legislative proposals.*)

Section 19.1009 Appeals

- Clarifies that a Type II appeal to the Planning Commission may be made by the applicant or an aggrieved party at a "de novo" hearing.
- Clarifies that a Type III appeal to City Council may be made by the applicant or a party with standing at a "review of the record" hearing not a "de novo" hearing.

Since the Procedures chapter works in concert with many other provisions of Title 19, amendments to this chapter could not be done in isolation. Consequently, additional amendments to other chapters are being proposed to effectively implement the new Procedures chapter and improve the overall functioning of Title 19. These related

amendments are summarized below so as to give the reader a more comprehensive understanding of all the procedural changes being proposed and how they relate to one another. Actual draft language for these related sections is provided separately.

- The current proposal reorganizes Title 19 into the following chapters. This reorganization, amongst other things, includes the creation of an Applications chapter that consolidates all of the City's land use applications into one place. This will make it easier for users of the code to identify the kinds of land use applications and reviews that are needed for a particular development proposal and will appropriately direct users to the new Procedures chapter for more detailed procedural information.

Chapter 19.100 Introductory Provisions

Chapter 19.200 Definitions

Chapter 19.300 Base Zones

Chapter 19.400 Overlay Zones

Chapter 19.500 Supplementary Development Regulations

Chapter 19.600 Off-Street Parking and Loading

Chapter 19.700 Public Facility Improvements

Chapter 19.800 Nonconforming Uses and Development

Chapter 19.900 Land Use Applications

Chapter 19.1000 Review Procedures and Administration

Chapter 19.1100 Annexations and Boundary Changes

Chapter 19.1200 Solar Access Protection

- The current proposal includes three new land use applications to fill gaps in the land use review process. They will be located in the new Applications chapter:

Development Review

The purpose of this Type I and Type II application is to ensure compliance with the standards and provisions of the City's land use regulations through an efficient review process that effectively coordinates the City's land use and development permit review functions.

Extensions to Expiring Approvals

The purpose of this Type I and Type II application 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.

Modifications to Existing Approvals

The purpose of this Type I, Type II, and Type III application is to provide an appropriate and efficient review process for evaluating minor and major modifications to approved land use applications and development plans after approvals have been obtained but prior to issuance of development permits.

CHAPTER 19.1000**REVIEW PROCEDURES AND ADMINISTRATION**

19.1001 GENERAL PROVISIONS

19.1002 PREAPPLICATION CONFERENCE

19.1003 APPLICATION SUBMITTAL & COMPLETENESS REVIEW

19.1004 TYPE I REVIEW

19.1005 TYPE II REVIEW

19.1006 TYPE III REVIEW

19.1007 TYPE IV REVIEW

19.1008 PUBLIC HEARINGS

19.1009 APPEALS

19.1001 GENERAL PROVISIONS**19.1001.1 Purpose**

The purpose of this chapter is to establish procedures for the review and processing of land use applications. This chapter is intended to make the land use review process clear and understandable; to facilitate timely review of land use applications by the City; and to enable the public to participate in the local land use decision-making process. The provisions contained in this chapter are consistent with Oregon law regulating land use review procedures.

19.1001.2 Applicability

All land use applications shall be reviewed using the procedures contained in this chapter.

19.1001.3 Review Types

All land use applications have both a review type and an application type. Chapter 19.900 contains a list of application types and their associated review types. This chapter establishes the review process associated with each review type.

- A. Review Types. There are four types of reviews: Type I, II, III, and IV. Table 19.XXXX lists the City's land use applications and their associated review type.
- B. Determination. When a review type for a land use application is not specified in Table 19.XXXX, or otherwise required by law, the Planning Director shall determine the applicable review type. The Planning Director's determination shall favor the review type that provides the most appropriate public notice and opportunity for participation.

19.1001.4 Review Authorities

The applicable review authority for each review procedure type shall be as follows:

- A. For a Type I review, the Planning Director is the review and decision authority.
- B. For a Type II review, the Planning Director will be the review and decision authority unless Table 19.XXXX indicates a different authority.

- C. For a Type III review, the Planning Commission is the review and decision authority.
- D. For a Type IV review, the Planning Commission does an initial review and provides a recommendation for approval or denial to the City Council. The City Council is the final review and decision authority.

19.1001.5 Applications

- A. Initiation. Type I, Type II and Type III applications may be initiated by the property owner or contract purchaser of the subject property, any person authorized in writing to represent the property owner or contract purchaser, and any public agency or private entity that has statutory rights of eminent domain for projects they have the authority to construct.

In addition, Type III applications for amendments to the Comprehensive Plan Map or Zoning Map and all Type IV applications may be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

- B. Review of multiple applications. When multiple land use applications are required for a single proposal, the applicant may opt or the City may require to have the applications processed individually in sequence or together in a consolidated review.
 1. Applications processed individually. Multiple applications processed individually require the applicant to file separate applications for each applicable land use action. Each application shall be reviewed separately according to the applicable review type. Applications with the highest numbered procedure type shall be processed first.
 2. Applications processed together. When multiple applications are consolidated into one review, the applicant shall be required to fill out an application form for each application type being reviewed. Applicable application fees for each application type will also apply. The consolidated application shall be accompanied by the information and documentation required for each individual application type. Review of the consolidated application shall be according to the highest numbered procedure type required for any part of the application. For example: a proposal that requires a Type II Design Review and a Type III Conditional Use would be processed as a Type III application when consolidated.

19.1001.6 Decisions

- A. Imposition of conditions. The review authority may impose conditions of approval on any Type I, Type II, Type III or Type IV application in order to ensure conformance with relevant approval criteria and development standards and to mitigate the anticipated impacts of the proposal.
- B. Approval or denial of the application shall be based upon the standards and criteria that were in effect at the time the application was first submitted.
- C. 120-day requirement. The city shall take final action on land use actions subject to ORS 227.178, including resolution of all local appeals, within 120 days after the application has been deemed complete, unless the applicant provides a written statement requesting or consenting to an extension of the 120-day requirement. The total of all extensions, except as provided for mediation, shall not exceed 245 days.
- D. Effective date of decisions. Decisions on land use actions become effective on:
 1. The day the decision is issued, if no appeal is allowed;
 2. The day after the appeal period expires if no appeal is filed; or

Proposed Code Amendment

3. The day the decision is issued by the final review authority, if an appeal is filed.
- E. Expiration of approved decisions.
1. Type I, II and III land use approvals granted pursuant to this chapter shall expire and become void per the following schedule.
 - a. For proposals requiring any kind of development permit, the development must: (1) obtain and pay for all necessary development permits and start construction within two years of land use approval, and (2) pass final inspection and/or obtain a certificate of occupancy within four years of land use approval.
 - b. For proposals not requiring development permits, the development must utilize its approvals within two years of land use approval.
 2. Land use approvals shall expire as outlined above unless one of the following occurs:
 - a. An extension is granted pursuant to Section 19.907.
 - b. The review authority specifies a different expiration date in the land use decision to accommodate large, complex, or phased development projects.
 3. The following land use approvals are exempt from expiration:
 - a. Public projects.
 - b. Amendments to maps and ordinances per Section 19.902.
 - c. Planning Director interpretations and determinations per Section 19.90X.
 - d. Annexations per Chapter 19.1100.
- F. Extensions to Expiring Approvals. The time period during which a land use approval is valid may be extended pursuant to Section 19.907.
- G. Modifications to Existing Approvals. A valid land use approval may be modified pursuant to Section 19.908.
- H. Appeals of Decisions. Land use decisions may be appealed per Section 19.XXXX

19.1002 PREAPPLICATION CONFERENCE

19.1002.1 Purpose

The purpose of the preapplication conference is to acquaint the applicant or applicant's representative with the requirements of this code, including relevant approval criteria, development standards, and procedures, in preparation for submission of a land use application. The preapplication conference is not an exhaustive review of all potential issues or requirements. It is informative, and all attempts will be made by staff to provide accurate and complete information. However, it is not binding, and it does not preclude the city from raising new issues, identifying additional requirements, or otherwise varying from what may have been indicated in the pre-application conference meeting or notes during the land use review process.

19.1002.2 Applicability

- A. For Type I applications, a preapplication conference is optional.
- B. For Type II, Type III and Type IV applications, a preapplication conference is required, with the following exceptions:

1. The city may waive the preapplication conference requirement if the Planning Director determines that a conference is not necessary based on the uncomplicated nature of the application or other factors.
2. A preapplication conference is not required for city-initiated Type IV applications.

19.1002.3 Preapplication Conference Procedures

Initiation and scheduling of preapplication conference shall occur as follows:

- A. The applicant shall submit a completed preapplication conference form provided by the city, the relevant fee, and copies of information required on the preapplication conference form.
- B. The city will schedule and conduct the preapplication conference within approximately twenty (20) days of receipt of a request for a preapplication conference.
- C. The Planning Director shall coordinate the involvement of city staff responsible for planning, development review, roads, drainage, and other subjects, as appropriate, in the preapplication conference. The preapplication conference is not open to the general public.

19.1002.4 Preapplication Conference Summary

- A. Within approximately fourteen (14) days after a pre-application conference, the city shall provide to the applicant, or the applicant's agent, a written summary of the conference. The purpose of the written summary is to provide a general assessment of a proposal and is not to be construed as a final recommendation by the city on the merits of the proposal.
- B. The written preapplication conference summary shall:
 1. Summarize the proposed use and relevant characteristics of the proposal;
 2. Identify necessary application submittal requirements;
 3. Identify the relevant approval criteria and development standards, with a disclaimer that the approval criteria and development standards in effect at the time an application is submitted will control;
 4. Identify specific additional information that is needed to respond to the relevant criteria and development standards or is recommended to respond to other issues; and
 5. Identify applicable application types and fees, with a disclaimer that fees are subject to change and that the fees in effect at the time a complete application is submitted will control.

19.1002.5 Preapplication Conference Validity Period and Follow-Up

- A. A preapplication conference is valid for two years. If a complete application that was the subject of a preapplication conference has not been submitted within two years of the conference, the applicant is encouraged, but not required, to schedule a new preapplication conference prior to submittal.
- B. An applicant may request a new preapplication conference, if desired, subject to the procedures in Section 19.1002.3.
- C. When a development proposal is revised, a follow-up preapplication conference may be required if the Planning Director determines that the revisions are significant and could result in a change of applicable standards and regulations or review type.

19.1003 APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

19.1003.1 Application Forms and Checklists

- A. The city shall supply land use application forms pursuant to the standards contained in the applicable state law, comprehensive plan, and implementing ordinance provisions.
- B. The city shall supply checklists or information sheets for applications, which shall detail the specific information which must be contained in the application, including format and number of copies.

19.1003.2 Application Submittal

- A. Complete applications required. All of the following items must be submitted in order for the city to accept the application and initiate the completeness review:
 - 1. Application form, including required notarized signature(s) of the property owner or public agency initiating the application.
 - 2. Deed, title report or other proof of ownership.
 - 3. Detailed and comprehensive description of all existing and proposed uses and structures, including a summary of all information contained in any site plans.
 - 4. Detailed statement that demonstrates how the proposal meets all applicable approval criteria, zoning and land use regulations, and development standards.
 - 5. Site plan(s), preliminary plat, or final plat as appropriate.
 - 6. Completed checklist, including all required materials and information.
 - 7. Payment for the appropriate land use application fee(s) and deposit(s), based on the fee schedule in effect on the date of application submittal.

19.1003.3 Completeness Review

- A. The city shall review the application submittal and advise the applicant in writing whether the application is complete or incomplete within thirty (30) days of receipt of the application.
- B. The city may determine an application to be incomplete based on any of the following:
 - 1. Failure to pay required fees;
 - 2. Failure of the applicant's narrative to address the relevant criteria or development standards; and
 - 3. Failure to supply the required information on the checklist.
- C. Incompleteness shall not be based on differences of opinion as to quality or accuracy.
- D. Determination that an application is complete indicates only that the application contains the information necessary for a qualitative review of compliance with the applicable standards.
- E. If an application is incomplete, the completeness notice shall list what information is missing and allow the applicant 180 days from the date of first submittal to submit the missing information. The completeness notice shall include a form, designed to be returned to the city by the applicant, indicating whether or not the applicant intends to amend or supplement the application.
- F. The application will be deemed complete for purposes of this section upon receipt by the city of:
 - 1. All of the missing information;

2. Some of the missing information and written notice from the applicant that no other information will be provided; or
 3. Written notice from the applicant that none of the missing information will be provided.
- G. The application will be deemed void if the application has been on file with the city for more than 180 days and the applicant has not met the obligations of subsection F above. Any application fees paid by the applicant will not be refunded. An applicant may resubmit a voided application to the city; it will be treated as a new application and all submittal requirements will apply.

19.1003.4 Re-submittal of Application Following Denial

If an application for a land use action has been denied, an application for the same or similar project on the same property may not be re-submitted unless one or more of the following occurs:

- A. Two years have passed since the denial became final.
- B. Substantial changes are made to the application. Substantial changes to an application have occurred only if the changes resolve all findings for denial of the original application.
- C. Standards and criteria relative to the findings of the original denial have changed and now support the application.
- D. For Type III or IV decisions, there has been a substantial change in the composition of the City Council and the Council was the final decision-maker. A substantial change in the composition of the Council occurs if fewer than three (3) Council members who voted to deny the original application remain on the Council.

19.1003.5 Withdrawal of Application

- A. An application may be withdrawn by the applicant at any time prior to issuance of the final decision if the Planning Director determines that the property owner or contract purchaser has consented in writing to withdrawal of the application.
- B. If an application is withdrawn after the city has mailed the public notice, the city shall send written notice stating the application has been withdrawn to all parties who were provided public notice.
- C. Any application fees paid by the application will not be refunded.

19.1003.6 Modifications to Applications

If an applicant makes modifications to an application after it has been deemed complete but prior to a decision, the following applies:

- A. Information, documents and other evidence related to the modification shall be submitted to the review authority at least seven days before the notice of action or hearing is mailed. Documents or other evidence submitted after that date will not be considered in the evaluation or staff report.
- B. When modifications are submitted by the applicant, the assigned review authority shall determine whether or not the modification significantly changes the application. If the review authority determines that the modification significantly changes the application, the city shall take one of the following actions, at the choice of the applicant:
 1. Suspend the existing application and allow the applicant to submit a new application with the proposed significant modifications. Before the existing application can be

suspended, the applicant must consent in writing to waive the 120-day rule on the existing application. If the applicant does not consent, the city shall not allow this option.

2. Reject the new documents or other evidence that has been determined to constitute a significant modification, and continue to process the existing application without considering the new materials.

19.1004 TYPE I REVIEW PROCEDURE

Type I applications involve permitted uses or development governed by clear and objective approval standards or standards that require the exercise of professional judgment only about technical issues. The Type I procedure provides for a ministerial review of an application by the Planning Director and does not include public notice.

19.1004.1 Pre-Application Conference

A pre-application conference is not required for Type I applications

19.1004.2 Type I Application Requirements

- A. Type I applications shall be made on forms provided by the Planning Director and shall include all of the information required by Section 19.1003.2.
- B. Type I applications are subject to completeness review procedures pursuant to Section 19.1003.3.

19.1004.3 Type I Public Notice

Public notice is not required for Type I applications.

19.1004.4 Type I Decision Authority

- A. The decision authority for all Type I applications shall be the Planning Director.
- B. The Planning Director shall approve, approve with conditions, or deny an application based on applicable approval criteria and standards. The decision will be issued within 120 days after the application was deemed complete.

19.1004.5 Type I Decision

Written notice of the decision for Type I applications shall be provided to the applicant and property owner of record within five days of the decision and shall include the following information:

- A. A brief summary of the proposal.
- B. A description of the site reasonably sufficient to inform the reader of its location, including site address, if available, map and tax lot number, and site zoning.
- C. A statement of the facts upon which the decision authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.
- D. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
- E. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.

- F. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list when and where the case file is available and the name and telephone number of the city representative to contact about reviewing the case file.

19.1004.6 Appeal of a Type I Decision

A Type I decision may be appealed by filing a petition of appeal within 15 days of the date the notice of decision was mailed. Appeal authorities are identified in Table 19.XXXX. Appeal requirements and procedures are outlined in Section 19.1009.

19.1005 TYPE II REVIEW PROCEDURE

Type II applications involve uses or development for which review criteria require only limited discretion. The Type II procedure provides for an administrative review of an application by the Planning Director and includes notice to nearby property owners to allow for public comments prior to the decision. The process does not include a public hearing.

19.1005.1 Pre-Application Conference

A pre-application conference is required for all Type II applications (see Section 19.1002). The Planning Director may waive this requirement.

19.1005.2 Type II Application Requirements

- A. Type II applications shall be made on forms provided by the Planning Director and shall include all of the information required by Section 19.1003.2.
- B. Type II applications are subject to completeness review procedures set forth in Section 19.1003.3.

19.1005.3 Type II Public Notice

- A. Within five days after the application has been determined to be complete, written notice of the Type II application shall be mailed to the following:
 - 1. The applicant and/or the applicant's authorized representative.
 - 2. The owner(s) of record of the subject property.
 - 3. Owners of record of properties within 300 feet of the perimeter of the subject property.
- B. The purpose of the public notice is to provide nearby property owners and other interested parties with an opportunity to submit written comments concerning the application prior to issuance of the Type II administrative decision. The goal of this notice is to invite relevant parties of interest to participate in the process.
- C. The public notice shall:
 - 1. Provide the case file number and a brief summary of the proposal.
 - 2. Provide a brief description of the subject property, including street address, if available, map and tax lot number, and zoning designation.
 - 3. Provide 14 days from the date of notice for submission of written comments.
 - 4. State the place, date, and time that comments are due.
 - 5. List the applicable approval criteria or standards against which the proposal will be reviewed.

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6. State that all application materials and applicable criteria and standards are available for review at the city, and that copies can be obtained at a reasonable cost.
 7. Include the name and phone number of the city representative to contact for additional information.
 8. Include the following notice: "Notice to mortgagee, lien holder, vendor or seller: The Milwaukie Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."
- D. In addition to public notice, the city has a referral process with certain departments and agencies. Upon receipt of a complete application, the city shall provide a copy of all application materials to the parties listed in 1-3 below for their review and comment. The department or agency is assumed to have no comments if no comments are received within 14 days from the date of the referral.
1. Any city-recognized neighborhood district association whose boundaries include the subject property.
 2. Design and Landmarks Committee for applications in downtown zones and involving a designated historic resource.
 3. Affected city departments and any governmental agency which is entitled to notice by the Code.
- E. Ten days after the application has been determined to be complete, notice of the application shall be posted on the site by the applicant. The city shall provide the applicant at least one sign and the instructions for posting. An affidavit of posting shall be submitted by the applicant and made part of the file.

19.1005.4 Type II Decision Authority

- A. The decision authority for Type II applications shall be the Planning Director unless a different decision authority is identified for a particular application in Table 19.XXXX
- B. The decision authority shall review all written comments received during the 14-day comment period prior to issuance of the decision. Written comments received after the comment period and prior to issuance of a decision shall not be considered by the decision authority.
- C. The decision authority shall approve, approve with conditions, or deny an application based on applicable approval criteria and standards and written comments received. The decision will be issued within 120 days after the application was deemed complete.

19.1005.5 Type II Decision

- A. Written notice of decision shall be sent by mail to the following parties within five days of the date of the decision:
 1. The applicant and/or the applicant's authorized representative.
 2. The owner(s) of record of the subject property.
 3. Any group or individual who submitted written comments during the comment period.
 4. Any governmental agency which is entitled to receive notice per the Code or has requested notice.
 5. Any group or individual who requested notice of the decision.
- B. The notice of decision shall include:

1. The nature of the application in sufficient detail to apprise persons entitled to notice of the applicant's proposal and of the decision.
2. A description of the site reasonably sufficient to inform the reader of its location, including site address, if available, map and tax lot number, and site zoning.
3. A statement of the facts upon which the decision authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.
4. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
5. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
6. A statement that any person who is adversely affected or aggrieved by the decision may appeal the decision by filing a petition of appeal within the 15-day appeal period provided by the city.
7. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list when and where the case file is available and the name and telephone number of the city representative to contact about reviewing the case file.

19.1005.6 Appeal of a Type II Decision

A Type II administrative decision may be appealed by the applicant and any person who is adversely affected or aggrieved by the decision by filing a petition of appeal within 15 days of the date the notice of decision was mailed. Appeal authorities are identified in Table 19.XXXX. Appeal requirements and procedures are outlined in Section 19.1009.

19.1006 TYPE III REVIEW PROCEDURE

Type III applications are quasi-judicial in nature and are subject to criteria that require the exercise of discretion and judgment and about which there may be broad public interest. Impacts may be significant and development issues complex. Extensive conditions of approval may be imposed to mitigate impacts or ensure compliance with applicable approval criteria and standards. The review process requires notice to nearby property owners and at least one public hearing before the Planning Commission. Some applications may require review by the Design and Landmarks Committee prior to the final hearing before the Planning Commission.

19.1006.1 Pre-Application Conference

A pre-application conference is required for Type III applications (see Section 19.1002).

19.1006.2 Type III Application Requirements

- A. Type III applications shall be made on forms provided by the Planning Director and shall include all of the information required by Section 19.1003.2.
- B. Type III applications are subject to completeness review procedures set forth in Section 19.1003.3.

19.1006.3 Type III Public Notice

- A. For Type III proposals that would amend the Comprehensive Plan Map or Zoning Map, the city shall provide notification as follows:

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1. To the Department of Land Conservation and Development at least 45 days prior to the first public hearing on the application. Notice to DLCD is not required when the city determines that the Oregon Statewide Planning Goals do not apply to a particular proposed amendment.
 2. To Metro at least 45 days prior to the initial evidentiary hearing on adoption. A Functional Compliance Plan report regarding the map change proposal shall be sent to Metro at least 15 days prior to the first public hearing.
 3. To all residents within 400 feet of the property under consideration at least 30 days prior to the public hearing.
 4. At least 30 days prior to the public hearing, a public notice shall be printed in a local newspaper and will appear on the public information cable television station. A second notice will appear at least ten days prior to the public hearing.
- B. For proposals that would change the zoning designation of a property that includes all or part of a mobile home or manufactured dwelling park, the city shall mail written notice to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days, but not more than 40 days, before the date of the first public hearing on the proposal.
- C. For all proposals, the City shall mail written notice of the hearing at least 20 days prior to the first public hearing on the proposal. The written notice shall be mailed to:
1. The applicant and/or applicant's authorized representative.
 2. The owner(s) of record of the subject property.
 3. Owners of record of properties located within 300 feet of the perimeter of the subject property.
- D. The public notice shall:
1. Provide the case file number and a brief summary of the proposal.
 2. Provide a brief description of the subject property, including street address, if available, map and tax lot number, and zoning designation.
 3. State the date, time, and place of the hearing.
 4. State that any member of the public may submit written comments prior to the hearing and may appear and provide written or oral testimony at the hearing.
 5. State that only those who have submitted written comments prior to the hearing or participated at the hearing shall be entitled to appeal.
 6. Provide a general explanation of the requirements for submission of testimony and the procedure for conduct of public hearings.
 7. State that a copy of the staff report will be available for review at no cost, and a copy will be provided at a reasonable cost, at least seven days prior to the hearing.
 8. List the applicable approval criteria or standards against which the proposal will be reviewed.
 9. State that all application materials and applicable criteria and standards are available for review at the city, and that copies can be obtained at a reasonable cost.
 10. Include the name and phone number of the city representative to contact for additional information.

11. Include the following notice: "Notice to mortgagee, lien holder, vendor or seller: The Milwaukie Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."
- E. The city shall prepare an affidavit of mailing of notice for the file. The affidavit shall indicate the date that the required notice was mailed to the parties required by 19.1006.3(C).
 - F. In addition to public notice, the city has a referral process with certain departments and agencies. Upon receipt of a complete application, the city shall provide a copy of all application materials to the parties listed in 1-3 below for their review and comment. The department or agency is assumed to have no comments if no comments are received within 14 days from the date of the referral.
 1. Any city-recognized neighborhood district association whose boundaries include the subject property.
 2. Design and Landmarks Committee for applications in downtown zones and involving a designated historic resource.
 3. Affected city departments and any governmental agency which is entitled to notice by the Code.
 - F. At least 10 days prior to the hearing, notice of the hearing shall be posted on the site by the applicant, and shall remain posted continuously until the hearing. The city shall provide to the applicant at least one sign and the instructions for posting. An affidavit of timely posting shall be submitted by the applicant and made part of the file.

19.1006.4 Type III Decision Authority

- A. The decision authority for Type III applications shall be the Planning Commission, as noted in Table 19.XXXX.
- B. The decision authority shall approve, approve with conditions, or deny an application subject to a Type III procedure after the public hearing.

19.1006.5 Type III Decision

- A. Written notice of decision shall be sent by mail to the following parties within five days of the date of the decision:
 1. The applicant and/or the applicant's authorized representative.
 2. The owner(s) of record of the subject property.
 3. Any group or individual who submitted written comments at or prior to the public hearing.
 4. Any group or individual who submitted oral testimony during the public hearing.
 5. Any governmental agency which is entitled to receive notice per the Code or has requested notice.
 6. Any group or individual who requested notice of the decision.
- B. The notice of decision shall include:
 1. The nature of the application in sufficient detail to apprise persons entitled to notice of the applicant's proposal and of the decision.
 2. A description of the site reasonably sufficient to inform the reader of its location, including site address, if available, map and tax lot number, and site zoning.

3. A statement of the facts upon which the decision authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.
4. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
5. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
6. A statement that only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a petition of appeal within the 15-day appeal period provided by the city.
7. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list when and where the case file is available and the name and telephone number of the city representative to contact about reviewing the case file.

19.1006.6 Appeal of a Type III Decision

A Type III quasi-judicial decision may be appealed by filing a petition of appeal within 15 days of the date the notice of decision was mailed. Only the applicant or persons who submitted comments or made an appearance of record at the public hearing have standing to appeal a Type III decision. Appeal authorities are identified in Table 19.XXXX. Appeal requirements and procedures are outlined in Section 19.1009.

19.1007 TYPE IV REVIEW PROCEDURE

Type IV applications address legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments that apply to more than just one property). The Type IV process includes a public hearing before a recommendation authority, the Planning Commission, which forwards a recommendation to the City Council. The City Council holds at least one public hearing before making a final decision.

The City Council, Planning Commission, Planning Director or an individual may initiate a Type IV legislative application to amend the Milwaukie Comprehensive Plan or Zoning Code.

19.1007.1 Pre-Application Conference

A pre-application conference is required for Type IV legislative applications that are initiated by an individual or party other than the city.

19.1007.2 Type IV Public Notice

- A. General public. At least 30 days prior to a public hearing on a legislative matter, a hearing notice shall be printed in a local newspaper and will appear on the public information cable television station. A second notice will appear at least ten days prior to the public hearing. The hearing notice will also be posted at City Hall and the City Planning Department for 30 days prior to the hearing. At a minimum, the notice shall include:
 1. The date, time, and location of the hearing.
 2. The number and nature of the ordinance to be considered.
 3. If applicable, a map showing the properties that will be impacted by the proposed ordinance.

- B. DLCD notice. Notice of a proposal to amend the Comprehensive Plan or Zoning Code or to adopt a new land use regulation shall be mailed to the Department of Land Conservation and Development along with appropriate forms at least 45 days prior to the initial evidentiary hearing on adoption. Notice to DLCD is not required when the city determines that the Oregon Statewide Planning Goals do not apply to a particular proposed amendment or new regulation.
- C. Metro Notice. Notice of a proposal to amend the Comprehensive Plan or Zoning Code or to adopt a new land use regulation shall be mailed to Metro at least 45 days prior to the initial evidentiary hearing on adoption. A Functional Compliance Plan report regarding the map change proposal shall be sent to Metro at least 15 days prior to the first public hearing.
- D. Measure 56 notice. Not more than 40, nor less than 20 days before the initial evidentiary hearing on a Type IV proposal, the city shall mail notice to owners of property within the city for which the proposed ordinance, if adopted, may, in the Planning Director's opinion, affect the permissible uses of land for those property owners. The notice of the initial evidentiary hearing for a Type IV procedure shall include at least the following information:
 - 1. If required by ORS 227.186, a statement in bold type across the top of the first page of the notice that reads as follows: "This is to notify you that the city shall consider a proposed land use regulation that may affect the permissible uses of your land".
 - 2. The case file number or ordinance title and a brief summary of the proposal and how it may affect existing and future development.
 - 3. The location or character of any affected properties.
 - 4. The date, time, and place of the hearing.
 - 5. Statement that any member of the public may submit written comments prior to the hearing and may appear and provide written or oral testimony at the hearing.
 - 6. Statement that only those who have submitted written comments prior to the hearing or participated at the hearing shall be entitled to appeal.
 - 7. A general explanation of the requirements for submission of testimony and the procedure for conduct of public hearings.
 - 8. A list of the applicable approval criteria or standards against which the proposal will be reviewed.
 - 9. Statement that a copy of the staff report will be available for review at no cost, and a copy will be provided at a reasonable cost, at least seven days prior to the hearing.
 - 10. Statement that all application materials and applicable criteria and standards are available for review at the city, and that copies can be obtained at a reasonable cost.
 - 11. Include the name and phone number of the city representative to contact for additional information.
 - 12. A brief summary of the decision-making process and timeline for the application.
 - 13. If applicable, a statement that the ordinance is a result of an order of the Land Conservation and Development Commission or Metro.
- E. The city shall prepare an affidavit of mailing of notice for the file. The affidavit shall indicate the date that the required notice was mailed to the parties required by 19.1007.2.

19.1007.3 Type IV Recommendation and Decision

- A. The Planning Commission shall serve as the recommendation authority for Type IV applications.
- B. The Planning Commission shall conduct an initial evidentiary hearing and provide a recommendation to the City Council within 180 days after the application was determined to be complete.
- C. The Planning Commission may recommend that the City Council reject or adopt the ordinance with or without changes. The Planning Commission will provide a written justification for the recommendation.
- D. The city shall provide notice of the hearing before the City Council consistent with the public notice requirements in Section 19.1007.2 above.
- E. At the conclusion of the first public hearing before City Council, the City Council shall take one of the following actions:
 - 1. Continue the matter to a date, time, and location certain.
 - 2. Remand the matter back to the recommendation authority for additional deliberation.
 - 3. Approve the proposal, with or without changes. City staff, with review from the City Attorney, shall prepare the ordinance with written findings that demonstrate adoption will comply with applicable approval criteria.
 - 4. Reject the proposal.

19.1007.4 Type IV Notice of Decision

- A. Not more than five (5) days after the date of the adoption or rejection of an ordinance subject to Type IV procedures, the city shall mail or otherwise submit notice to the Department of Land Conservation and Development (DLCD) on forms provided for such notice.
- B. Within 7 days after the date of the adoption or rejection of the proposal, the city shall mail or otherwise provide notice to persons who testified orally or in writing to the recommendation or decision authority while the public record was open regarding the proposed ordinance. The notice shall include:
 - 1. A brief summary of the decision;
 - 2. If adopted:
 - a. The date and number of the adopting ordinance;
 - b. Where and when the adopting ordinance and related findings may be reviewed; and
 - 3. A summary of the requirements for appealing the decision to Land Use Board of Appeals (LUBA).

19.1007.5 Appeal of a Type IV Decision.

The City Council decision on a Type IV application is the city's final decision. A Type IV decision may be appealed to LUBA by filing a petition of appeal within 21 days of the date the notice of decision was mailed. Only the applicant or persons who submitted comments or made an appearance of record at the public hearing have standing to appeal a Type IV decision.

19.1008 PUBLIC HEARINGS

19.1008.1 Responsibility of City for Public Hearings

The city shall:

- A. Schedule land use applications for review and public hearing before the appropriate review authority as required for the particular application procedure by Table 19.XXXX
- B. Provide public notice of the public hearing consistent with the requirements in this chapter.
- C. Prepare minutes for the public hearing that include the decision on the matter, and the reasons for the decision.
- D. Mail a copy of the decision to those required to receive such information as specified for the particular application procedure.

19.1008.2 General Public Notice Requirements

- A. Notice of public hearings shall be provided as described in the following code sections:
 - 1. Section 19.1009 for notice requirements for a public hearing on an appeal of a Type I decision.
 - 2. Section 19.1009 for notice requirements for a public hearing on an appeal of a Type II decision.
 - 3. Section 19.1006 for notice requirements for a public hearing on a Type III application and Section 19.1009 for notice requirements for a public hearing on an appeal of a Type III decision.
 - 4. Section 19.1007 for notice requirements for a public hearing on a Type IV application.
- B. All public notices shall be deemed to have been provided or received upon the date the notice is deposited in the mail or personally delivered, whichever occurs first.
- C. Cost of the initial public notice shall be included in the development permit application fee.

19.1008.3 Rules of Procedure

- A. Public hearings shall be conducted in accordance with the bylaws and rules of procedure adopted for the hearing body by City Council. Provisions referenced in Subsections 19.1008.4 through 19.1008.15 below are applicable to all public hearings.
- B. At the commencement of a hearing, a statement shall be made to those in attendance that:
 - 1. Lists the applicable approval criteria.
 - 2. States that testimony and evidence must be directed toward the applicable approval criteria or other criteria in the Zoning Code or Comprehensive Plan that the person testifying believes is applicable to the proposal.
 - 3. States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision-maker and parties an opportunity to respond to the issue precludes an appeal of the decision.

19.1008.4 Challenges to Impartiality

- A. Except for Type IV hearings, a party to a hearing or a member of a hearing body may challenge the qualifications of a member of the hearing body to participate in the hearing and decision. The challenge shall state by affidavit the facts relied upon by the challenger relating to a person's bias, prejudgment, personal interest, or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner.

- B. The Planning Director shall attempt to notify the person whose qualifications are challenged prior to the meeting. The challenged person shall have an opportunity to respond orally and in writing to the challenge. The challenge shall be incorporated into the record of the hearing.

19.1008.5 Participation by Interested Officers or Employees

No officer or employee of the city who has a financial or other private interest in a proposal may give an official opinion to the hearing body on the proposal.

19.1008.6 Ex Parte Contacts

Except for Type IV hearings, the general public has a right to have the hearing body members free from prehearing or ex parte contacts on matters heard by them. This must be balanced with the public right to access public officials on any matter. Therefore, hearing body members shall reveal any relevant prehearing or ex parte contacts at the commencement of the public hearing on the matter. If such contacts have impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall abstain from voting. In addition, parties who had the communication with the member have the right to rebut the substance of the communication at the commencement of the public hearing on the matter.

19.1008.7 Abstention or Disqualification

Except for Type IV hearings, disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of a hearing body present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

19.1008.8 Rights of Abstaining or Disqualified Member of the Hearing Body

- A. An abstaining or disqualified member of the hearing body shall be counted for purposes of forming a quorum. A member who represents a personal interest at a hearing may do so only by abstaining from voting on the proposal, vacating the seat on the hearing body, physically joining the audience, and making full disclosure to the hearing body. A member representing a personal interest at a hearing shall not be counted for purposes of forming a quorum.
- B. If all members of a hearing body abstain or are disqualified, all members present after stating their reasons for abstention or disqualification shall be re-qualified and shall proceed with the hearing.
- C. Except for Type IV hearings, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or decision unless the member has reviewed the evidence received.

19.1008.9 Burden and Nature of Proof

Except for Type IV determinations, the applicant shall bear the burden of proof and persuasion that the proposal is in compliance with applicable provisions of this code. The applicant and any opponents may submit a set of written findings or statements of factual information which are intended to demonstrate the proposals complies or fails to comply with any or all applicable standards and criteria.

19.1008.10 Continuance of Hearing

- A. All documents or evidence relied upon by the applicant shall be submitted to the city and be made available to the public. If additional documents or evidence are provided by any party at the hearing, the hearing body may allow a continuance or leave the record open for at least seven days to allow the parties a reasonable opportunity to respond. The hearing body

may ask the applicant to consider granting an extension of the 120-day decision period if a delay in proceedings could impact the ability of the city to take final action on the application, including resolution of any local appeals.

- B. Prior to closing the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The hearing body shall grant such request by continuing the public hearing or leaving the record open for additional written evidence or testimony pursuant to subsection C below.
- C. If the hearing body grants a continuance, the hearing shall be continued to a date, time and place certain, at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open to submit additional written evidence or testimony for the purpose of responding to the new written evidence.
- D. If the hearing body leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the hearing body for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearing body shall reopen the record and any person may raise new issues which relate to the new evidence, testimony, or criteria for decision-making.
- E. A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 227 unless the continuance or extension is requested or agreed to by the applicant.
- F. Unless waived by the applicant, the hearing body shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. For purposes of this section, "argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts. "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.

19.1008.11 Decision

- A. Following the close of the public portion of the hearing, the hearing body shall approve, conditionally approve, or deny the application. If the hearing is an appeal, the hearing body shall affirm, reverse or remand the decision that is on appeal.
- B. A final local decision on an application for a development permit shall be made within 120 days from the date the application was deemed to be complete, except that, with the agreement of the hearing body and an applicant or appellant, the processing of a matter under consideration may be extended per Section 19.1001.8(A).
- C. Notice of decision shall be provided pursuant to requirements established for Type I, Type II, Type III and Type IV applications in applicable sections of this chapter.

19.1008.12 Findings and Order

The hearing body shall prepare findings of fact and an order, which shall include:

- A. A statement of the applicable criteria against which the proposal was tested.

- B. A statement of the facts that the hearing body found establishing compliance or noncompliance with each applicable criterion, and assurance of compliance with applicable standards.
- C. The decision to approve, conditionally approve, or deny a proposal and the reasons for that decision.

19.1008.13 Record of Proceedings

The hearing body shall prepare and maintain minutes of all proceedings in accordance with the bylaws adopted for the hearing body.

19.1009 APPEALS

A decision on the issuance of a Type I, II or III development permit may be appealed to the city by filing a petition to appeal with the city within 15 days of the date on the written notice of decision. Table 19.XXXX identifies the decision authority and appeal authority for each application type.

19.1009.1 Petition to Appeal

- A. A petition to appeal shall contain:
 - 1. Date and file number of the decision being appealed.
 - 2. Documentation that the person filing the petition has standing to appeal per Subsections 19.1009.3(A), 19.1009.4(A) and 19.1009.5(A).
 - 3. Detailed statement describing the basis of the appeal.
 - a. For appeal of a Type II decision, the statement must identify the manner in which the person filing the appeal was adversely impacted or aggrieved by the decision.
 - b. For appeal of a Type I or Type III decision, the statement must identify which approval criterion or standard is believed to have been overlooked or incorrectly interpreted or applied and/or which aspect of the proposal is believed to have been overlooked or incorrectly evaluated.
- B. The appeal petition fee shall be paid at the time of filing.
- C. If petition to appeal and applicable fee are not filed within the 15-day time period, or if the petition to appeal does not contain the required items specified in Subsection A(1-3) above, the petition shall not be accepted by the city. A decision by the city to not accept an appeal within the specified appeal period shall be considered final.

19.1009.2 General Procedures Applicable to All Appeals

Appeal hearings before the appropriate appeal authority as specified in Table 19.XXXX shall be conducted in accordance with the public hearing provisions in Section 19.1008 of this code.

19.1009.3 Specific Provisions for Appeal of a Type I Decision

- A. A Type I decision may only be appealed by the applicant or the applicant's representative.
- B. The city shall mail written notice of the appeal hearing to the applicant/representative not less than 20 days prior to the appeal hearing.

- C. The appeal hearing shall be de novo, which means new evidence and argument pertaining to the specific approval criteria or condition being appealed can be introduced in writing, orally, or both.
- D. The scope of the appeal hearing shall be focused on the specific approval criteria, condition, or both being appealed, and reasons why a finding, condition, or both is or is not in error as a matter of fact, law or both.
- E. The decision of the designated appeal authority for appeals of Type I decisions shall be the final local decision.

19.1009.4 Specific Provisions for Appeal of a Type II Decision

- A. A Type II decision may be appealed by the applicant, the applicant's representative, or by any other person is adversely affected or aggrieved by the decision.
- B. At least 20 days prior to the appeal hearing, the city shall mail written notice of the appeal hearing to all parties who were entitled to Type II public notice under Section 19.1003.3.
- C. The appeal hearing shall be de novo, which means new evidence and argument pertaining to the specific approval criteria or condition being appealed can be introduced in writing, orally, or both.
- D. The scope of the appeal hearing shall be focused on the specific approval criteria, condition, or both being appealed, and reasons why a finding, condition, or both is or is not in error as a matter of fact, law or both.
- E. The decision of the designated appeal body for appeals of Type II decisions shall be the final local decision.

19.1009.5 Specific Provisions for Appeal of a Type III Decision

- A. A Type III decision may be appealed only by the applicant, applicant's representative, or any other person who participated by providing either oral testimony or written evidence on the record leading to the decision by the decision authority.
- B. At least 20 days prior to the appeal hearing, the city shall mail written notice of the appeal hearing to all parties who were entitled to Type III public notice under Section 19.1006.3.
- C. The scope of review for an appeal of a Type III decision shall be a review of the record with the right of argument. This means that new evidence may not be introduced but the applicant has the right to present argument pertaining to any evidence already on the record.
- D. The record shall include:
 - 1. A factual report prepared by the Planning Director.
 - 2. All exhibits, materials, pleadings, memoranda, stipulations, and motions submitted by any party and reviewed or considered in reaching the decision under review.
 - 3. The minutes from the original hearing and a detailed summary of the evidence.
- E. The decision of the designated appeal authority for the appeal of a Type III decision shall be the final local decision.

19.1009.6 Remand from the Land Use Board of Appeals

City of Milwaukie decisions remanded by the Land Use Board of Appeals (LUBA) shall be heard and decided within 90 days from the date of the remand following the procedures of Section 19.1009.

Chapters 1 and 2 Comprehensive Plan

November 9, 2010

Overview of Key Changes

The proposed amendments follow the structure and approach of the existing Comprehensive Plan. Though a broader evaluation of the City's public involvement policies may be timely and warranted, the proposed amendments are less ambitious. The focus of these amendments is to remove procedures and criteria from the Plan that are more appropriate to locate in the code, while stating the broader policies that will continue to drive the City's development review process.

CHAPTER 1 — CITIZEN INVOLVEMENT

GOAL STATEMENT: To encourage and provide opportunities for citizens to participate in all phases of the planning process, to keep citizens informed and to open lines of communication for the sharing of questions, problems and suggestions regarding the Comprehensive Plan and land use regulations.

Background

In March of 1976, the Milwaukie City Council established a Comprehensive Planning Steering Committee to ensure adequate citizen involvement in the City's planning process. Representatives of each of five Neighborhood Organizations within the City were appointed early in 1977 to work with the City Planning Staff and consultants in preparing a Comprehensive Plan.

Several other groups were involved in the planning process. Neighborhood Organizations helped develop, administer, and collect a Community Survey, reviewed background information, and developed goals and objectives. A Technical Advisory Group, comprised of representatives of City and County staffs, special service districts, and regional, State, and federal agencies, also participated in reviewing and evaluating the Preliminary Plan. Special Task Forces were created to advise on unresolved policy areas including Housing, Transportation, Parks and Willamette Greenway, and City Growth and Governmental Relationships.

During the 1987-88 Plan update, a Comprehensive Plan Review Committee (CPRC) was established. This group made recommendations regarding State required changes to the Plan as well as suggestions for overall Plan improvement, clarity, and coherence. The CPRC also evaluated the existing citizen involvement process and created the following goal, objectives, and policies to better involve Milwaukie citizens in the planning process:

OBJECTIVE #1 — NEIGHBORHOOD ASSOCIATIONS

The City will promote citizen participation in the planning process primarily through the 9 Milwaukie Neighborhood Areas which follow the boundaries as illustrated in Map 2. The City Council will recognize Neighborhood Associations which meet the following requirements:

- a) That one or more well-publicized general neighborhood association meetings have been held for purposes of information, organization, adoption of bylaws, and election of officers.
- b) That all community meetings shall be publicized in advance of the meeting date in accordance with existing state law, and participation should be open to any property owner, resident, business owner, or representative of any non-profit organization located within the neighborhood area. Criteria regulating voting shall be included in the bylaws.

c) That if neighborhood association bylaws fulfill the above minimum requirements, they will be recognized by official City Council action and placed on file with the City.

d) Insure continued recognition of community group as long as the group fulfills its responsibilities, maintains the above policies, and holds at least one well-publicized meeting per year, and furnishes a copy of minutes of that meeting to the City, together with an up-to-date list of officers.

Policies

1. Neighborhood organizations:

a) will be advisory to the City Council and Planning Commission on matters affecting their neighborhoods,

b) may submit requests for funding of neighborhood projects for possible inclusion in the City budget.

2. The City will assist Neighborhood Associations by:

a) Providing recognized associations with limited assistance, subject to budgetary allocations as approved by the City Council.

b) Notifying neighborhood associations of proposed land use actions and legislative changes as required by ordinances. Elected association representatives will receive information regarding land use issues.

OBJECTIVE #2 — BROAD PUBLIC PARTICIPATION

To encourage broadly based public participation involving a cross section of citizens from a variety of geographic and interest areas, solicited through an open, well-publicized process.

Policies

1. The City will openly recruit members for the Planning Commission and citizen advisory committees using a variety of media to stimulate interest.

2. The City will form a Comprehensive Plan Review Committee (CPRC) to assist in periodic review of the Plan and its implementing ordinances on a schedule outlined in the Planning Process Section of the Plan. The CPRC will consist of the following members: one representative from each recognized neighborhood area, one member from each of three City citizen advisory committees (Parks and Recreation, Center/Advisory Board, Traffic Safety), one member from the Planning Commission and one member from the City Council, one member from the business community and one member from a County Planning Organization.

Proposed Code Amendment

3. Special Task Forces will be organized to assist the CPRC in unresolved policy areas during major or minor Plan updates. Openings for Task Forces will be well-publicized through a variety of media.

OBJECTIVE #3 — COMMUNICATION

Promote informed public participation in planning decisions by providing readily available publications and printed materials regarding current issues and proposed policies and providing for two-way communication between policy-makers and citizens.

Policies

1. Make planning documents available through City offices and public libraries. This includes, but is not limited to Plan inventories, planning background information, Staff reports and minutes of Planning Commission and Comprehensive Plan Review Committee meetings.

2. Keep the public informed of opportunities for involvement in land use planning using a range of available media including newspaper notices, the City website, mailings, the City newsletter, television, and meetings. ~~Advertise all public hearings regarding land use issues in the newspaper and on the local cable television station.~~

3. Seek citizens' input on major land use issues through community organizations, service organizations, interest groups, neighborhood groups, etc. Provide opportunities for citizen participation in preparing and revising local land use plans and ordinances. Provide citizen involvement opportunities that are appropriate to the scale of a given planning effort. Large area plans, affecting a large portion of community residents and groups, require citizen involvement opportunities of a broader scope than that required for more limited land use decisions. ~~Provide information concerning major land use issues by conducting one "town hall" meeting coordinated by City Staff a minimum of 10 days prior to the public hearing before the Planning Commission. Neighborhood Associations and identified community service or interest groups shall be notified of both "town hall" meetings and public hearings. A major land use change has widespread and significant impact beyond the immediate area, such as changes producing large volumes of traffic, changes in the character of the land use, or a change affecting large areas or many different ownerships.~~

4. City Staff will communicate with citizens about land use policy changes and significant development proposals through a variety of media early on and throughout the decision-making process. ~~issue a news release to local newspapers explaining upcoming issues which would result in changes to the Comprehensive Plan or its implementing ordinances prior to discussion of these issues at a public hearing.~~

5. Provide timely and adequate notice of proposed land use matters to the public to ensure that all citizens have an opportunity to be heard on issues and actions that affect them. ~~News releases and Planning Commission agendas will be provided to the City Library and community/senior center. These groups will be encouraged to include stories regarding planning issues in their newsletters.~~

6. Any citizen testifying at a public hearing regarding a land use issue will receive a copy of the outcome of the hearing and the findings and conclusions upon which the decision was based.

OBJECTIVE #4 — ONGOING CITIZEN INVOLVEMENT

Continue to implement the City's adopted Citizen Involvement Program.

Policies

1. Assure adequate funding in the planning budget for publicity, advertising, staff, graphic materials, or other supplies which are necessary to support the citizen involvement program.
2. The Comprehensive Plan Review Committee shall be responsible for evaluating the citizen involvement process as part of each Plan update, and providing recommendations for changes to the Planning Commission.

CHAPTER 2 — PLAN REVIEW AND AMENDMENT PROCESS

GOAL STATEMENT: Establish a Plan review and amendment process as a basis for land use decisions, provide for participation by citizens and affected governmental units, and ensure a factual base for decisions and actions.

Planning Concepts

Although adoption of the Plan represents firm general agreement about the City's future and an official, coordinated set of policies concerning the way in which decisions will be reached, no plan is static.

Changing local circumstances and unanticipated events as well as changing regional, State, and national policies require that the Plan be flexible, and that an ongoing planning process be initiated to ensure that the Comprehensive Plan continues to meet the City's needs.

The following goal, objectives, and policies ensure that the Plan will be reviewed and amended on a regular basis:

OBJECTIVE #1 — AMENDING THE PLAN

Review, revise, and amend the Comprehensive Plan on a regular basis, assuring that the Plan and implementing ordinances meet regional, State, and Federal guidelines.

Policies

1. Ensure adequate monitoring of the Plan by maintaining a factual data base which will enable citizens to judge the effectiveness and desirability of Plan policies. Monitoring information may include, but is not limited to, population, vacant lands, traffic volumes, public facility capacities, and economic information.

Proposed Code Amendment

2. The Comprehensive Plan Review Committee (CPRC, see Citizen Involvement Element), which will be appointed by the City Council, will coordinate and conduct a major Plan review every five years and an interim plan review between years two and three of the five year cycle. The CPRC will submit a report to the Planning Commission containing any recommended changes. The Planning Commission will hold at least one public hearing on any proposed modifications to the Plan and forward its recommendations to the City Council.

3. Individuals, the Planning Commission, or the City Council may request Plan amendments at any time separate from the normal Comprehensive Plan Amendment application process. A request by an individual will be considered by the Planning Commission, who may initiate further formal consideration of a Plan amendment if it is determined the proposed change is in the public interest. The Planning Commission should also hold a public hearing annually to evaluate issues related to the Plan or recommended Plan changes. A report of this public hearing will be provided to the City Council who may approve it or take further action as required.

4. Submit copies of proposed Plan changes to affected governmental units at the draft amendment stage and following final adoption of changes.

5. All proposed legislative Comprehensive Plan amendments will be considered at advertised public hearings before the Planning Commission and City Council. ~~At least 30 days prior to a public hearing, a public notice shall be printed in a local newspaper and will appear on the public information cable television station. A second notice will appear at least ten days prior to the public hearing.~~

6. Amendments to the text or maps of the Comprehensive Plan will be processed as legislative actions per the procedures set forth in the Zoning Ordinance. ~~If the proposed amendment is quasi-judicial, notice of the requested change will be mailed to all residents within 400 feet of the property under consideration at least 30 days prior to the public hearing. Newspaper notice in accordance with the requirements for legislative plan amendments is also required.~~

7. All Plan amendments will be evaluated based on the criteria adopted in the Zoning Ordinance for approval of Plan amendments. ~~the following criteria:~~

- ~~• conformance with the Comprehensive Plan, its goals, policies, and spirit,~~
- ~~• public need for the change,~~
- ~~• public need is best satisfied by this particular change,~~
- ~~• the change will not adversely affect the health, safety, and welfare of the community,~~
- ~~• the change is in conformance with applicable Statewide Planning Goals,~~
- ~~• the change is consistent with Metro Growth Management Functional Plan and applicable regional policies.~~

OBJECTIVE #2 — IMPLEMENTING THE PLAN

Implement this Plan through appropriate ordinances and action.

Policies

1. Amend existing ordinances and adopt new ordinances to carry out the policies of this Plan as necessary.
2. Apply zoning in a timely manner which is consistent with this Plan.
3. All zoning and subdivision ordinances will be consistent with the intent and be based on this Comprehensive Plan.
4. All actions of the City on conditional uses, variances, zone changes, and all other planning actions will be consistent with the intent of this Plan.

**DRAFT SECTION 19.905
DEVELOPMENT REVIEW**

November 9, 2010

Summary of Key Policy Items in the Proposed Amendments:**19.905.2.A**

Staff proposes to exempt activities that are frequently reviewed and that the public would expect to have quick permit turnaround times.

19.905.2.B and C

The primary difference between Type I and Type II review is that Type II reviews include evaluation of criteria and regulations that are not clear and objective. The higher level process for Type II reviews allows for more notice and more detailed review of the proposal. Staff will complete the table in this section to clearly define which code sections are clear and objective and which are discretionary.

Type I reviews will be required as a follow-up in reviewing permits for projects that have received Planning Commission approval.

Staff believes that Downtown Design Review thoroughly addresses the issues that would be addressed through Type II Development Review. As a result, the current proposal does not require Type II Development Review in addition to Downtown Design Review.

19.905.3

This section establishes how the development permit review application fits within the overall land use approval and development permit review processes. This establishes that development review may be a concurrent application or that it can follow a land use approval. For most large developments, a development review application will be needed prior to the issuance of development permits.

19.905.4

The approval criteria for development review are fairly simple. The process is intended to be a thorough review of the proposal with respect to the code and its applicable sections as well as a review of any conditions of approval from land use approvals earlier on in the process.

For Type I reviews, the development review will be a review against clear and objective standards. This should be a straightforward "checklist" type of review to ensure that the plans meet the numerical development standards of the code.

Type II reviews will also include review against some clear and objective standards, but will also include subjective and context sensitive criteria. As such, staff believes it is appropriate for nearby residents, NDAs, and other agencies to have the chance to comment through the Type II review process on whether the approval criteria are met.

Section 19.905 DEVELOPMENT REVIEW**19.905.1 Purpose**

The purpose of this section is to ensure compliance with the standards and provisions of the City's land use regulations through an efficient review process that effectively coordinates the City's land use and development permit review functions. Development review is intended to encourage quality development that is compatible with its surroundings and reflects the goals and policies of the Milwaukie Comprehensive Plan.

19.905.2 Applicability

- A. Exemptions. The following development proposals are not required to submit a Development Review application and are exempt from the requirements of this section. Proposals that are exempt from this section must still comply with all applicable development and design standards. For proposals that require a development permit, compliance with standards will be reviewed during the permit review process.
 - 1. New or expanded single-family detached or attached residential dwellings.
 - 2. Single-family residential accessory uses and structures.
 - 3. Interior modifications to existing buildings that do not involve a change of use.
 - 4. Construction of public facilities in the public right-of-way.
 - 5. Temporary events as allowed in Chapter 11.04.
- B. Type I review. The following development proposals must submit a Development Review application and are subject to the requirements of this section, unless explicitly stated otherwise in an applicable land use approval or waived by the Planning Director at the time of development permit submittal.
 - 1. New development and expansions or modifications of existing development that are reviewed only against clear and objective development and design standards, per Table 19.905.2. Proposals that have already obtained other land use approvals are not exempt from Type I Development Review.
 - 2. A change in primary use.
 - 3. Parking lot expansions or modifications that change the number of parking spaces by five spaces or more.
- C. Type II review. The following development proposals for must submit a Development Review application and are subject to the requirements of this section. Type II Development Review does not apply to development proposals in the downtown zones as these zones have a separate design review process.
 - 1. New development or expansions or modifications to existing development where the applicant elects to have the proposal reviewed against any design and development standards that are not clear and objective, per Table 19.905.2.
 - 2. New development or expansions or modifications to existing development where the proposal must be reviewed against any design and development standards that are not clear and objective, per Table 19.905.2.

Table 19.905.2 Categories of Design and Development Standards		
Chapter	Clear and Objective	Discretionary
19.300	19.301; 19.302 (placeholders, to be completed later)	(To be completed later)
19.400	(To be completed later)	(To be completed later)

19.905.3 Review Process

A. General Provisions

1. Development review generally includes review of the proposed use(s), structure(s), and site improvements for compliance with applicable standards. For expansions or modifications of existing development, the review is limited to the modified portions of the site or structure and any other site improvements that may be affected by the proposed modifications.
2. Development proposals that are subject to Type II Development Review and require other land use approvals may submit a Type II Development Review application with the other required land use application(s) and have them reviewed concurrently per Section 19.1001.5.
3. Development proposals that are subject to Type I Development Review and require development permits may submit a Type I Development Review application with the required development permits and request concurrent review. The City will not issue development permits until the Type I Development Review application has been approved.
4. Submittal of a Type II Development Review application may not preclude the need for submittal of a Type I Development Review application. Depending upon the nature of the development proposal, Type II Development Review may be required during the land use review phase of the proposal, and Type I Development Review may be required during the development permit review phase of the proposal.

B. Review Types

1. Type I Development Review applications are evaluated through a Type I review process per Section 19.1004. Type I Development Review ensures compliance with basic land use and development standards, clear and objective design standards, and transition area standards, where applicable.
2. Type II Development Review applications are evaluated through a Type II review process per Section 19.1005. Type II Development Review is for proposals that opt for or require discretionary review because they either do not meet clear and objective design standards or not all applicable design standards are clear and objective. The Planning Director will determine whether existing standards are clear and objective where they are not clearly identified as such.

19.905.4 Approval Criteria

The criteria in Section 19.505.4 are the approval criteria for Type I and Type II development review applications. The criteria are based on a review of development standards throughout Title 19, Zoning Ordinance. Not all of the standards within the chapters listed below are applicable to a proposal, and the City will identify the applicable standards through the

Proposed Code Amendment

development review process. Though the criteria are the same for Type I and Type II development review, the standards evaluated in a Type I review will be only clear and objective standards, while the Type II review will involve discretionary standards and/or criteria.

An application for Type I or Type II Development Review shall be approved when all of the following criteria have been met

- A. The proposal complies with all applicable base zone standards in Chapter 19.300.
- B. The proposal complies with all applicable overlay zone standards in Chapter 19.400.
- C. The proposal complies with all applicable supplementary development regulations in Chapter 19.500.
- D. The proposal complies with all applicable off-street parking and loading standards and requirements in Chapter 19.600.
- E. The proposal complies with all applicable public facility standards and requirements, including any required street improvements, in Chapter 19.700.
- F. The proposal complies with all applicable conditions of any land use approvals for the proposal issued prior to or concurrent with the Development Review application.

DRAFT OUTLINE 19.907
EXTENSIONS TO EXPIRING APPROVALS

November 9, 2010

Overview of Key Changes

Proposed amendments to the City's review procedures (Chapter 19.1000) includes a new provision that provides for the automatic expiration of approved land use decisions that have not been utilized after a specified period of time. This provision is intended to protect the community from some of the problems associated with land use approvals that don't expire, which include, but are not limited to, the following:

- Project construction is delayed or dragged out for a long period of time resulting in extended disruption to neighbors and visual blight.
- Surrounding conditions change between land use approval and construction, and the project has unmitigated impacts on the neighborhood, a natural resource area, or the transportation network.
- Staff changes between land use approval and construction resulting in less efficient and/or effective review of the project during development review.
- Neighbors are surprised when the project is constructed years or decades after an approval has been issued.

To balance the need and desire for expiration of approvals, the current proposal includes a formal process for reviewing and possibly extending the time period during which land use approvals are valid on a case-by-case basis. It allows for an extension only after it has been determined that conditions in and around the proposed development site are substantially the same. It also provides for a Type II review of some extensions in order to provide for the most appropriate public notice and opportunity for participation.

EXTENSIONS TO EXPIRING APPROVALS

Draft Outline

I. 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.

II. Applicability

Approved Type I, II, and III applications that expire on a specified date, but have not yet expired.

III. Review Process

General Provisions:

- The extension request must be filed prior to the expiration date of the approval.
- If granted, the extension is valid for two years from the effective date of the extension approval. Additional extensions may be requested. There is no limit to the number of extensions that can be requested or approved.
- If an extension is denied, the applicant may seek approval for the proposed development project by resubmitting all applicable land use applications. Such applications will be subject to all current procedures, approval criteria, and development standards.

Review Types:

- If the original application was approved through a Type I procedure, the extension request shall also be processed as a Type I procedure.
- If the original application was approved through a Type II or Type III procedure, the extension request shall be processed as a Type II procedure in order to provide opportunity for public notice.

IV. Approval Criteria

In order to approve an extension request, the Planning Director shall make findings of fact based on evidence provided by the applicant that the following criteria are met:

- There have been no significant changes on the subject property, in the vicinity of the subject property, or to any relevant regulations since the original application was approved.
- No modifications to the approved application or to the conditions of approval are proposed.
- If the previously approved application included a Transportation Impact Study or a Water Quality Resource Report, an updated report has been provided with the extension application. A letter from a recognized professional will also satisfy this criterion if it states that conditions have not changed since the original approval and that no new analysis is warranted.

DRAFT OUTLINE 19.908
MODIFICATIONS TO EXISTING APPROVALS

November 9, 2010

Overview of Key Changes

It is not uncommon for development plans to change after land use approval and during development permit review as more detailed design and engineering is completed for a specific development proposal. The current proposal creates a formal process for reviewing these kinds of modifications. It codifies staff's existing practice of reviewing some modifications administratively and sending others back to Planning Commission for review. The current proposal also goes one step further and allows for a Type II review of some modifications in order to provide for the most appropriate public notice and opportunity for participation.

MODIFICATIONS TO EXISTING APPROVALS

Draft Outline

I. Purpose Statement

The purpose of this section is to provide an appropriate and efficient review process for modifying approved land use applications and development plans after approvals have been obtained but prior to issuance of development permits.

II. Applicability

This section applies to all land use decisions that were approved through a Type I, II, or III review process and have subsequently been modified such that the proposal no longer substantially conforms to the plans and/or other development documents upon which the original proposal was evaluated and approved.

Exemptions:

- Modifications required by City staff during development review for compliance with conditions of approval, development standards, public works standards, or any other applicable standards that the City has the authority to implement at the time of development.
- Modifications that substantially conform to the plans and/or other development documents upon which the original proposal was evaluated and approved.

III. Review Process

General Provisions:

- Planning Director to determine whether a modified proposal does not substantially conform to the approved land use proposal.
- If the Planning Director determines that a modified proposal no longer substantially conforms to the approved land use proposal, the Planning Director may require one of the following:
 - o Submittal of an application to modify the original land use approval per this section.
 - o Resubmittal and reconsideration of the original land use application.
- For modified proposals requiring review under this section, Planning Director to determine whether the modification is major or minor in nature.
 - o Major modifications are modifications that alter a condition of approval imposed by the Planning Commission, have different or more impacts than the original proposal, and/or require substantial changes to the findings from the original land use approval.
 - o Minor modifications are all other modifications not identified as major modifications.
- Review under this section is limited to the modified portions of the development proposal and any other portions of the development proposal that are affected by the modification.
- Denial of a proposed modification does not invalidate the original land use approval.

Review Types:

- Minor modifications shall be reviewed by the Planning Director pursuant to a Type I or Type II review process. Review type to be dependent upon the nature and scope of the modification. Planning Director to favor the review type that provides the most appropriate public notice and opportunity for participation.
- Major modifications shall be reviewed by the Planning Commission pursuant to a Type III review process.

IV. Approval Criteria**Approval criteria for minor modifications:**

- The proposed modification complies with all applicable development standards and requirements, except as modified by the original land use approval.
- The proposed modification will continue to meet all applicable approval criteria upon which the underlying land use approval was based.
- The proposed modification, as either proposed or conditioned, will not negatively impact nearby uses, protected natural features, or public facilities any more than what was identified in the original land use approval.
- The proposed modification does not alter or contravene any conditions of approval from the original land use approval.

Approval criteria for major modifications:

- The proposed modification complies with all applicable development standards and requirements, except as modified by the original land use approval.
- The proposed modification will continue to meet all applicable approval criteria upon which the underlying land use approval was based.

V. Conditions of Approval

The review authority may impose conditions of approval that are suitable and necessary to ensure that:

- The proposed modification will not cause the approved development to fail to meet any approval criteria upon which the underlying land use approval was based.
- The proposed modification will not negatively impact nearby uses, protected natural features, or public facilities.

**DRAFT OUTLINE 19.909
CODE INTERPRETATIONS AND
DIRECTOR DETERMINATIONS**

November 9, 2010

Overview of Key Changes

- The current proposal includes notice of a Director's interpretation to the Planning Commission and City Council. The current code does not require this notice.
- The current proposal allows for a broader range of discretionary decisions for Director's determinations. The current code allows only determinations for legal lot status and non-conforming use status. The proposed code allows for determinations on whether a proposed use is similar to other outright allowed uses within a zone. There is also a provision for a determination to be made in any situation where the director evaluates the facts of a situation or proposal and decides how the code applies to that situation or proposal.
- The current proposal adds approval criteria for the consideration of interpretations and some determinations.

CODE DETERMINATIONS AND INTERPRETATIONS

Draft Chapter Outline

I. Purpose Statement

The purpose of the code determinations and interpretations is to allow for discretionary rulings on the interpretation and application of the provisions of land use regulations. The most common instances for which such rulings are required are where the text of the land use regulation is unclear, where a determination about the similarity of a proposed use and an outright allowed uses(s) is needed, and where a determination is requested regarding the legal status of a use or property. The initial decisions on these matters are to be made at an administrative level with the option for appeal.

It is not the intent of these provisions to affect changes to the application or interpretation of land use regulations that should be adopted through the legislative process.

II. Applicability

This section applies in the following situations:

- A. A code interpretation may be made where the language of Title 14, 17, or 19 is unclear in its terms, meaning, or intent. An interpretation is not necessary where the meaning of the code is unambiguous and no discretion is required in its interpretation.
- B. A director's determination may be requested for the following situations:
 - Determination of the legality of a non-conforming use.
 - Determination of the legality of a unit of land.
 - Determination of whether a use is similar in nature to other outright allowed uses within a zone. A formal determination is not necessary where the comparison is obvious and the decision is non-discretionary.
 - Determination for any other situation where a discretionary decision is needed to review the facts of a situation and make determination as to the status, category, allowance, etc. per Titles 14, 17, or 19. This process is not available for provisions that specifically state that a decision under that provision cannot be appealed.

III. Review Process

- A. General provisions:
 - Code interpretations are initiated by application. The applicant may be any member of the public, the Planning Director, Planning Commission, or City Council.
 - Within 14 days of receipt of an application for a code interpretation, the Planning Director will decide whether to refuse the request or accept the request and issue an interpretation. Any application fees will be refunded if a request is refused.
 - Director's determinations are initiated by application to the City.
- B. Review Procedures:

- Code interpretations are reviewed as a Type I land use application, with copy of notice going to Planning Commission and City Council.
- Director's Determinations are reviewed as a Type I application.

IV. Approval Criteria

- A. Due to the unique nature of the application, a code interpretation does not have approval criteria. An interpretation shall consider the following factors in the basis for the interpretation:
- The proposed interpretation is consistent with the common meaning of the words or phrases at issue.
 - The proposed interpretation is consistent with relevant policy direction from official City documents such as the Comprehensive Plan and its ancillary documents.
 - The proposed interpretation is consistent with discussions from the legislative record about the intent for the words or phrases at issue.
 - The proposed interpretation is consistent with the interpretation of other portions of the Milwaukie Municipal Code.
 - The proposed interpretation is consistent with federal and state laws and court rulings that affect the words or phrases at issue (Meant to be a way to incorporate changes in the law that affect how we interpret and implement the code).
 - The interpretation shall not be issued if:
 - o It is contrary to the plain meaning or intent of the ordinance language (intended to be a clear signal that a DI cannot twist the meaning of the code).
 - o It has the effect of implementing a new land use regulation, as opposed to being a clarification of the meaning or application of an existing regulation.
- B. Approval criteria for a Director's Determination:
1. Director's Determinations for Similar Use Allowances shall be based on the following criteria:
 - The proposed use and outright allowed uses are comparable with respect to:
 - o Hours of operation
 - o Generation of off-site impacts such as noise, lighting glare, dust, and odors.
 - o Employment and customer characteristics
 - The proposed use is consistent with the stated purpose of the zone under consideration.
 - The similarity or difference between the zone for the proposed use and other zones where the proposed use is allowed outright.
 - The proposed use is consistent with goals and policies in the Comprehensive Plan regarding the proposed land use and their locations within the city.
 2. Director's Determinations for non-conforming use status shall be based on:
 - Proof that the nonconforming situation was permitted under applicable regulations at the time it was established.
 - o Copies of building and/or land use permits issued at the time the use, building, or other condition was established.

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- o Copies of zoning code provisions and/or maps.
 - o Demonstration that the situation was established before the applicable development code for the community was adopted.
- Proof that the situation has been legally maintained over time. Evidence that the nonconforming situation has been maintained over time includes
 - o Utility bills.
 - o Income tax records.
 - o Business licenses
 - o Listings in telephone, business and Polk directories
 - o Advertisements in dated publications, e.g., trade magazines;
 - o Building, land use or development permits.
- 3. Director's Determinations for the legal status of a unit of land shall be based on the following pieces of information. The determination shall evaluate the date of creation or boundary change for the units of land in question, and determine if the proper city, county, and state approvals required at that time were granted.
 - Title report including related instruments of conveyance.
 - Plats on file with the Clackamas County Surveyor's office.
 - Deeds recorded with the Clackamas County Recorder's office.
 - Prior land use applications and decisions from the Planning Commission or City Council.
- 4. Other determinations. Other determinations that evaluate the specific facts of a situation and determine the how the provisions of Title 14, 17 or 19 apply shall be based on the following criteria:
 - Conformance with applicable portions of the Comprehensive Plan.
 - Conformance with purpose or intent statements, if available, in the applicable sections of code.
 - The legislative record for the adoption of or amendments to the applicable sections of code.
 - Legal opinions from the City Attorney

V. Other Provisions for Interpretations and Determinations
A. Code interpretation:

- Code interpretations shall be kept on file with the Planning Department.
- Code interpretations are not allowed where the interpretation would affect the standards or approval criteria that either:
 - o apply to a quasi-judicial land use application that is currently under review by the city, or,
 - o apply to an unresolved citation issued by the City.
- Interpretations control the future application of the zoning code unless superseded by a subsequent code interpretation or legislative code change.

B. Code determination:

- Based on the specific facts presented for the determination.

- May be relied upon for future use determinations where factors are similar, but does not necessarily set precedent.
- Does not bind the City to issue any permit or preclude code enforcement action if applicant's actual use differs from what was presented in the determination.
- Does not expire unless the code used for the determination is amended.

C. Non-conforming use or legal unit of land status determination:

- Applicant may request subsequent determinations if new evidence or materials become available.
- City may proceed with code enforcement action in cases where evidence is clear that the use or unit of land was established illegally.

DRAFT CHAPTER 19.800
NONCONFORMING USES AND DEVELOPMENT

November 9, 2010

Overview of Key Changes

Nonconforming development is development that does not conform to the City's current development standards either because it was established prior to the enactment of City ordinances governing the development or because the development conformed at the time it was established but applicable City ordinances have since changed. The City's nonconforming code provisions describe property owners' rights to maintain, alter, expand, demolish, and rebuild a nonconforming use, structure, or site improvement.

The following is a summary of key changes being proposed:

- Deletes the provision that allows for the alteration or extension of nonconforming structures through this chapter. As currently written, nonconforming structures can potentially vary from existing development standards more than conforming structures can through the avenues available to them, i.e. through the City's existing variance or home improvement exception allowances. As proposed, alterations to nonconforming structures may still be allowed; however, they would be subject to the same variance process and approval criteria as conforming structures.
- Clarifies and allows for more flexibility for replacement of uses or structures destroyed by accident or natural hazard. The proposed changes are consistent with the ORS and the City Attorney's recommendation.
- Provides a process whereby high impact nonconforming uses may be amortized or otherwise discontinued.
- Moves the nonconforming determination section out of this chapter and expands its usefulness by allowing determinations in other situations.

CHAPTER 19.800

NONCONFORMING USES & DEVELOPMENT

19.801 PURPOSE

19.802 GENERAL PROVISIONS

19.803 CONTINUANCE OF NONCONFORMING USES & DEVELOPMENT

19.804 ALTERATIONS TO NONCONFORMING USES & DEVELOPMENT

19.805 REBUILDING NONCONFORMING USES & DEVELOPMENT

19.806 AMORTIZATION OF NONCONFORMING USES

19.801 PURPOSE

Nonconforming development is development that does not conform to the City's current development standards either because it was established prior to the enactment of City ordinances governing the development or because the development conformed at the time it was established but applicable City ordinances have since changed.

Most nonconforming development may be maintained but may not be altered without land use review. In certain cases, nonconforming development may be rebuilt if destroyed. In general, however, nonconforming development shall be brought into conformance with applicable land use and development standards when redevelopment occurs. High impact nonconforming uses are particularly disfavored by the City to continue into perpetuity.

The provisions in this chapter are meant to balance property owners' rights, community development standards, and public health, safety, and welfare.

19.802 GENERAL PROVISIONS

A specific site may be nonconforming because it contains a nonconforming use, nonconforming development, or both. Nonconforming development includes structures and/or other site improvements such as off-street parking, landscaping, or access. The following provisions apply to all types of nonconforming uses and development:

- A. Determination of the legal status of a nonconforming use or development is made by the City and may require a determination application pursuant to Section 19.908.
- B. The status of a nonconforming use or development is not affected by changes in ownership.
- C. A nonconforming use or development may be changed to a conforming use or development by right. Once a conforming use or development occupies the site, the nonconforming rights are lost and a nonconforming use or development may not be reestablished.
- D. Normal maintenance and repair of a nonconforming use or development is allowed.
- E. Where other sections of this code require nonconforming uses or development to come closer to conformance, those provisions apply.

19.803 CONTINUANCE OF NONCONFORMING USES & DEVELOPMENT

A nonconforming use or development may be continued indefinitely unless the provisions of this section or of section 19.806 apply.

If a nonconforming use or development is discontinued or abandoned for a period of six months, the site will lose its nonconforming status and any further use or development on the site shall conform to all applicable land use and development standards. For the purpose of calculating the six-month period, a use or development is discontinued or abandoned upon the first day of any of the following events, whichever occurs first:

- A. On the date when a nonconforming structure is physically vacated.
- B. On the date a nonconforming use ceases to be actively involved in the sale of merchandise or the provision of services.
- C. On the date of termination of any lease or contract under which the nonconforming use has occupied the land.
- D. On the date a request for final reading of water and power meters is made to the applicable utility districts.

19.804 ALTERATIONS TO NONCONFORMING USES & DEVELOPMENT

These provisions regulate alterations of a nonconforming use or development.

- A. The following apply to nonconforming uses:
 - 1. A nonconforming use shall not be altered unless such alteration is approved by the Planning Commission through a Type III procedure in accordance with Chapter 19.1006. The applicant will be required to demonstrate that the proposed use modifications would result in no more of a detriment to surrounding properties than the existing nonconforming use.
 - 2. A nonconforming use shall not be moved in whole or in part to any portion of the site other than that occupied by the use at the time of the nonconformance determination.
 - 3. Changes to operations such as business hours are not allowed.
 - 4. No additional structure, building or sign shall be constructed on the site in connection with a nonconforming use.
 - 5. If a nonconforming use involving a structure is replaced by another use, the new use shall conform to this code unless the Planning Commission, through a Type III review procedure, determines that such structure is suitable only for another nonconforming use. The applicant must demonstrate that the new nonconforming use would be no more detrimental to surrounding properties than the one to be replaced.
- B. The following applies to nonconforming development:
 - 1. Alterations or expansions that will increase the nonconformity are not allowed unless a variance is approved consistent with Chapter 19.911.
 - 2. Alterations or expansions that conform to the current requirements of this code or will decrease nonconformity are allowed.
 - 3. A nonconforming development may be moved to a different location on the same site provided that the move does not increase the nonconformity or create a different nonconformity.

19.805 REBUILDING NONCONFORMING USES & DEVELOPMENT

The following provisions establish when a nonconforming use or development may be reestablished or rebuilt following its intentional or accidental destruction:

- A. When a nonconforming use or development is intentionally destroyed to an extent less than or equal to 50% of its replacement value, restoration is allowed. The restoration shall not result in an increase in the nonconformance of the use or development.
- B. When a nonconforming use or development is intentionally removed or destroyed to an extent exceeding 50% of its replacement value, restoration of the use or development shall conform to all applicable land use and development standards.
- C. If a nonconforming use or development is partially or totally destroyed by fire or other causes or natural hazards beyond the control of the owner, the use or development may be restored or replaced. The restoration or replacement shall not be more out of conformance with the development standards than the original use or development.
- D. Restoration or replacement of nonconforming uses or development that have been partially or totally destroyed, whether intentional or by accident, must commence within one year of the date the destruction occurred. If restoration or replacement does not commence within the one-year period, the use or development will lose its nonconforming status and any subsequent use or development on the site shall conform to all applicable land use and development standards.

19.806 AMORTIZATION OF NONCONFORMING USES**19.806.1 Purpose**

The purpose of this section is to provide a process whereby the City could require the discontinuance of nonconforming land uses through amortization in a manner that is fair, predictable, and transparent. The length of any amortization period shall take into consideration the general character and use of the surrounding properties and the degree to which the nonconforming use is detrimental to the public's health, safety, or welfare.

19.806.2 Applicability

- A. All high impact nonconforming uses as identified on the City's inventory pursuant to Subsection 19.806.3.B are subject to amortization and discontinuance.
- B. The following nonconforming uses are not subject to amortization and discontinuance:
 - 1. Nonconforming uses that can be made conforming within 6 months, and the owner enters into an agreement with the City to bring the use into conformance within 6 months.
 - 2. Nonconforming uses that are protected under the Religious Land Use and Institutionalized Persons Act.
 - 3. Nonconforming uses that are identified as low impact uses.

19.806.3 Identification of Nonconforming Uses

- A. The City Council may, by majority vote at a public meeting, direct the Planning Director to evaluate existing land uses within the City for the purpose of compiling an inventory of uses subject to amortization and discontinuance.
- B. The Planning Director's evaluation shall be undertaken as follows.

1. Identify all nonconforming uses pursuant to City Council direction as provided in Subsection 19.806.3.C.
 2. Determine the legal status of all identified nonconforming uses pursuant to Subsection 19.XXX.
 3. Determine which nonconforming uses are high impact uses.
 5. Compile an inventory of all properties containing a legal, high impact nonconforming use.
 6. Remove from the inventory all properties that are exempt under Subsection 19.806.2.B.
- C. At the time of a vote directing the Planning Director to perform an evaluation of nonconforming uses, the Council shall specify the following:
1. The amount of time the Planning Director has to perform the review, which shall be no less than 60 days.
 2. Whether the Planning Director shall evaluate all uses in the entire City or whether the evaluation should be limited to a specified geographic area, specified types of use, or defined zoning districts.
- D. No less than 60 days after the Planning Director's completion of the inventory, City Council shall review and adopt the inventory.
- E. No more than 30 days after the adoption of the inventory by City Council, the Planning Director shall provide notice to all property owners listed in the nonconforming use inventory. Such notice shall include the following:
1. A statement that the City has determined that the subject property contains at least one nonconforming use that is subject to discontinuance through amortization.
 2. The findings from the Planning Director's evaluation.
 3. A copy of this ordinance.
 4. The date of the first evidentiary hearing before the Planning Commission to determine the schedule of amortization and discontinuance. Such hearing shall be scheduled no less than 60 days after the mailing of the notice.

19.806.4 Review Process

- A. For all properties with identified nonconforming uses that are included in the nonconforming use inventory, the City shall require the discontinuance of such uses under a plan whereby the full value of any use-dependent structures and facilities are amortized within a definite and reasonable period of time.
1. The determination of the amortization period for the discontinuance of the nonconforming use shall follow the Type IV review process pursuant to Section 19.1007.
 2. The approved amortization schedule shall be adopted by ordinance and shall commence upon the effective date of the ordinance.
 3. The hearings under this section shall be limited to the determination of the following:
 - a. Whether the use is properly included on the inventory.

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- b. Whether the use is exempt from amortization and discontinuance under subsection 19.806.2.B.
 - c. The duration of a reasonable amortization period and all terms associated therewith, based on the evaluation criteria in Subsection 19.806.5.
- B. The City Council may, by ordinance, execute a compliance agreement with the owner of any property found to contain a nonconforming use. Such an agreement shall include a schedule for the property owner to bring the property into conformance through discontinuance of all nonconforming uses in a certain amount of time or by other means acceptable to the City. Such an agreement shall alleviate the City's obligation to schedule a hearing to determine an amortization period pursuant to Subsection 19.806.4.A or, alternatively, shall supersede the established amortization period for the subject property.
- C. The City shall record in the Clackamas County real estate records all ordinances adopted pursuant to this section.

19.806.5 Evaluation Criteria

- A. The City's review authorities shall consider the following criteria, at a minimum, in determining a reasonable length for the amortization period:
 - 1. Nature of the use, its operations, and structures.
 - 2. Character of the land and land uses in the surrounding area.
 - 3. Location of the use in relation to surrounding uses.
 - 4. Value of the land and its improvements.
 - 5. Length of time the use has been in existence and the length of time the use has been nonconforming.
 - 6. Amount of capital investment in the structures or improvements on the property at the time the use became nonconforming.
 - 7. Amount of investment realized to date and the amount remaining, if any, to be recovered during the amortization period.
 - 8. Existence or nonexistence of lease obligations.
 - 9. Removal costs that are directly attributable to the establishment of a termination date.
 - 10. Other costs and expenses that are directly attributable to the establishment of a termination date.
 - 11. Burden on the property owner resulting from discontinuance of the use.
 - 12. Benefit to the public resulting from discontinuance of the use.