

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, January 11, 2011
6:30 PM**

COMMISSIONERS PRESENT

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

STAFF PRESENT

Katie Mangle, Planning Director
Brett Kelter, Associate Planner
Li Alligood, Assistant Planner

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 October 26, 2010

Commissioner Gamba moved to approve the October 26, 2010, Planning Commission meeting minutes as presented. Commissioner Batey seconded the motion, which passed unanimously. Chair Klein noted he was not in attendance at the October 26, 2010 meeting, but voted yes.

3.0 Information Items

There were no information items.

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: Natural Resource Overlay Project briefing

Staff Person: Brett Kelter

Brett Kelter, Associate Planner, presented the Natural Resource Overlay (NRO) Project via multimedia display. The two main components of the project involved amending the draft code and draft maps, essentially adding Habitat Conservation Area (HCA) regulations to existing rules for water quality resources. The draft maps and a summary of the project were presented last Thursday at the open house that was attended by 35 to 40 people. Staff answered questions mainly about what the NRO project was and how it would affect those attending. No significant changes were suggested to the maps.

Staff made the following clarifications for the Commission:

- A 10% change in the setback or up to a 10% change in some lot dimensions would be allowed. Changes in setback adjustments could be utilized on any side of the property. The idea was to allow people to use these adjustments to avoid impacts to the resource area. If proposed changes would not work within the overlay guidelines, the variance process would be required.

- The City would need to get some degree of signoff from Metro about the City's code, draft maps, and methodology for making future corrections/amendments at this initial stage. Metro would want to ensure that the Code and maps that the City was adopting met the statewide goals. Staff was still sorting out the process for adjusting the maps; perhaps Metro could get notice and have opportunity to comment as part of the normal notification process when map changes were proposed. The City preferred that Metro feel comfortable with the maps and process so that making adjustments according to the outlined methodology was not a major deal.
- The City had to get Metro's concurrence, but at the regional scale the maps were almost identical; changes being made were very localized, and both Metro and the City would be in agreement next year. The Code already outlined the process if someone disagreed with the map. Metro's level of involvement depended on the scale of the changes being made. Changes at a tax lot level would not rise to the level of concern for the region. If a whole watershed was taken out, Metro would want to talk about it. Minor adjustments at the local level could be easily addressed, but if someone wanted to challenge the location of a significant area, they would need to go through a substantial review including revisiting the original inventory analysis.
- The key question at the open house had come from property owners with no resources on their property, but who had received the notification letter because they were within the 100 ft disturbance boundary and wanted to know what they needed to do. Staff advised that if the work outside the resource area was close enough and rose to the level of disturbance, the City just wanted to see how the resource would be protected.
 - There were people on both sides of the issue; some wished the rules did more to protect resources, while others believed there was enough regulation and questioned why more was being added.
- Staff would like to bring the package to the Commission in March for an official hearing recommendation to take to City Council for adoption. The Commission was asked to at least look at the commentary document by January 31, 2011, to help identify any concerns or questions. Suggestions about specific language in the Code would also be helpful.

Chair Klein stated that a lot of meetings had been held on the Natural Resource Overlay, which was also brought before the public a number of times. He felt confident in moving forward.

Mr. Kelter invited members of the advisory group to offer their comments.

Dick Shook, 4815 SE Casa Del Rey Dr, stated he lived in unincorporated Clackamas County and had participated in a number of the meetings. As a neighbor of North Clackamas Park, his main concern was how the development of the north side of North Clackamas Park would proceed; it seemed closely tied with this procedure. While his property was located well within the 100 ft disturbance boundary, no further development was anticipated where he lived. He believed that Metro had not included some areas that should have been, which he understood would be addressed in the future as procedures were established.

Commissioner Gamba noted some items were at odds with each other, for example, gardening was not permitted but agriculture was an outright use.

- Proposed Code Amendment 19.322.1, Intent, C.8, the section's intent was to preserve existing native vegetation, and specifically called out no gardens??.
- Under Exempt activities, Item 19.322.4.A.6 on 6.1 Page 10 of the packet, it states "agriculture practices or uses...provided that such activities or uses do not result in

increased direct stormwater discharges to WQR areas.” He asked if the definable difference was making money from the specified activity.

Mr. Kelter suggested differentiating between existing versus new agriculture in Item 6. In general, the principal of the overlay was to not remove or expand what had already been done. For example, existing lawns and gardens would not need to be removed, but no further expansion of either should occur. He agreed it seemed inconsistent if a new property owner was allowed to plow in a riparian area because agricultural, including new agriculture, was allowed. They were taking from existing language, which also was unclear in this way.

Discussion continued with the following comments:

- The City should work to stop activities such as tilling and the use of pesticides and herbicides, specifically those that would harm resources. New food growing methods, such as permaculture and food forests, do not cause runoff into the creek. The Code should allow nondestructive food growing, whether new or already existing, and try to move agriculture, whether new or already existing, in that direction.
 - The point was the City did not want people encroaching further into the resource area.
 - Item 6 discussed above could be revised to be more specific about low impact agricultural usage. Commissioner Gamba offered to help with the language.
- There was a way to allow people to grow food very sustainably and noninvasively within a Water Quality Resource (WQR) area while also helping existing agriculture that was tilling and causing runoff into the creeks. It was a little more work, but food could be grown just as effectively without tilling.
 - Change the activities allowed in the WQR/riparian area to something like no tilling or herbicides/pesticides allowed no matter how long the use is there, existing or new. A phase out period could be used for existing uses.
- There was discussion on how the rule on pesticides would be enforced. Instead of completely exempting sustainable agriculture, the City could require that a plan be submitted to ensure the appropriate practices were being followed.
 - Growing food should not be outright prohibited.
 - The wording “only native plants” should not be used.
- With a minor correction to point Item 6, the Code already covered the concerns fairly well. A main principal is not to do new disturbance. The Code was not prohibiting food growth as long as what was being planted in the riparian area was not on the nuisance list and was planted in a way that did not require wholesale type of tilling, which was quantified by a 150-sq ft area.
 - The word “garden” needed to be addressed.
 - “Preserve existing native vegetation or other...” was the important language in the Code.
 - In most riparian areas, existing native vegetation had been choked out by blackberry and other invasive species. People should be encouraged and allowed to clean up the invasive species and plant food, without allowing any tilling within the WQR, whether an existing or new use.
 - The argument is that one cannot make money if tilling is not allowed, but other options were available. It was an invalid argument.
 - The scale or method should be considered. This Code was not only limited to agriculture; existing gardens within the WQR would also be affected.
- The goal was to at least hold the line on any new disturbance in the WQR. The draft Code was written to state if tilling or agriculture was disturbing more than 140 sq. ft., a plan was required to show how the resource area was not being impacted.

- Sustainable gardening was outside Metro's compliance with regard to this issue. The Code could be reconsidered and rewritten in the future when someone submits a sustainable garden plan and contests the restriction.
- Exempt activities, those exempt from further review, were not necessarily precluded from submitting a plan showing the City how construction would be managed. The exemption only meant that the activity did not need a higher land use review.
- The difference was between the City's current practice and what was envisioned under the Code in terms of trying to enforce limits on pesticide or herbicide use.
- The first step in trying to enforce limits on pesticide or herbicide use was to make the Code very clear that certain pesticides/herbicides could not be used. Staff was not sure how proactive the City could be in catching people using these substances. Enforcement would likely follow the current practice of complaint driven enforcement. With more resources, providing proactive education about alternatives would be helpful. Spills occurring in or near certain water quality areas bring involvement from any state agencies.
- No stump grinding did not elicit any concerns from the advisory group. Allowing people to find a way to remove the stump without creating an erosion problem or removing the root was seemed reasonable; otherwise more review would be required so the City could consider how that activity was being done.
 - Depending on how it is done, stump grinding did not remove the root wad since they only go down six inches; was that disturbing the soil?
 - The discussion involved how to get stump grinding equipment to the location. Staff set it up to be able to have productive conversations on a case-by-case basis, rather than one answer for all situations.
 - Stump grinding would probably be addressed through a Type 1 review to consider a plan for how the rest of the resource is protected.
- Commissioner Gamba was asked to distribute his other questions to the Commission via email following his meeting with staff.

Les Poole, 15115 SE Lee St, Clackamas County, stated he had been involved with a similar issue in Damascus with their Comprehensive Plan. He liked a lot of what was being done and hoped the sensitivity of the proposed Code would be applied to the upcoming transportation projects and that the Commission would consider the issues from different perspectives, such as farmers, TriMet, etc.

- He noted there was a real gray area about the source of the numbers given for the buffers, which was contentious in Damascus and Lane County recently. He did not believe a 200-ft buffer on the Willamette River was big enough. He did not support taking away backyards, but the sensitivity to Kellogg Creek, Three Creeks, or the Willamette River should not be the same as small pockets or wetlands. Having a one-size-fits-all to create fairness was generally overkill in some areas and not enough in others.
- Considering the economy, he reminded that every decision being made had costs attached. Revisiting and revising this Code was fine, but people were very worried about their property values and getting the economy going again. He cautioned the Commission about too much micromanagement. People get jumpy about their land.

Ms. Mangle stated that the public hearing for the Natural Resource Overlay Project would be held in March and the Commission's recommendation would go to City Council around the end of April. The plan was to time this one Code chapter with the broader Land Use and Development Review (LUDR) Code Tune-up project. Ideally, the proposed Natural Resource Overlay Code would go into effect in May.

- The Commission would be asked to act on the 98% draft and provide a list of things for staff to continue working on as staff takes the Code chapter to City Council, similar to what was done with the Transportation System Plan.
- As noted, no annotations were made to the map at the open house. Some negative comments were received, but none that would influence the Code. Specific concerns were addressed and the Code was distributed so additional comments might be received.
- All the property owners would get notification again due to the Measure 56 required notice. The comment period was still open. Staff would collect the comments received and note conversations had so the Commission had that information. The notes from the advisory group meetings, which were pretty robust conversations, were all online on the project website.

6.2 Summary: Residential Development Standards
Staff Person: Katie Mangle

Katie Mangle, Planning Director, stated in addition to the Natural Resource Overlay and LUDR Code Tune-up projects, the Residential Development Standards project was also a high priority. Research was being done to understand the history in Milwaukie of how the City ended up with the current Code. The material provided to the Commission would be referenced as the project proceeded.

Li Alligood, Assistant Planner, reviewed the staff report attachments with these key comments:

- The Code history memorandum was a comprehensive history of residential development standards from the initial adoption of the City's zoning ordinance to the present. It was extremely disjointed, and a lot of it was contradictory.
 - Many of the changes made were in response to very specific issues or requirements from Metro or the State to come into compliance with some kind of specific policy.
 - There had not been a comprehensive overhaul to the residential development standards since 1979, and even that was more of a refinement than an overhaul. Some new zones were introduced and the uses specified more clearly, but she knew of no comprehensive review or analysis of the residential development standards.
 - The current design standards for single-family residences were adopted in 2002, but none applied for multifamily residential development or infill compatibility standards.
- The Comprehensive Plan (Comp Plan) had a really strong direction for its residential design standards and called for individual neighborhood design standards. Most of the residential design policies outlined in the Comp Plan had not yet been implemented by the Code. Though the plan was written in 1988, there were still quite a few areas where they had not been able to implement the policies that were adopted in the Comp Plan.
- The Code summary on 6.2 Page 29 outlined what was currently allowed by the Code and identified the current standards.

Ms. Mangle stated the consultant was developing site prototypes and illustrations, which most people would identify with. The public involvement process would begin with a survey.

- In November, the Commission discussed creating a subcommittee of the Commission to carry the weight of the project. Following that conversation, she still recommended a subcommittee or steering committee of interested Commissioners, but also wanted to initiate separate stakeholder groups, whether the Neighborhood District Association (NDA) Land Use Committees (LUCs), developers, or people interested in doing duplexes, to allow some conversations to occur outside of the subcommittee meetings.

- Some people would not want to come to 7 subcommittee meetings, and better conversations could be had within some smaller groups.
- A web survey would reach a broad array of people and identify people who want to be involved on the stakeholder groups or subcommittee.
- The draft survey questions were included in the packet as Attachment 1, and Survey Monkey or a similar tool would be utilized.

Discussion between the Commission and staff continued as follows:

- The 1988 Comp Plan was essentially irrelevant, and needed to be revisited, revised, or worked around. The process should move in a way that the future was being considered as opposed to the status quo.
 - **Ms. Mangle** agreed the Comp Plan needed to be updated but it could not be done with this project. They had to figure out a strategy on how to accomplish the update and how to obtain funding for it. It would be a 3-year process.
 - The Commission should focus on pushing issues within the constraints of the Comp Plan. Every Code project usually resulted in some tweaking of the Comp Plan, but this was limited and usually had to be within the general policy direction. Environmentally, and in terms of urban design, much of what the Comp Plan actually called for was not implemented yet.
 - Staff had been waiting to do this Code project for 2 years. They needed to finish this project, which would take a year, while also building the case to do the broader Comprehensive Plan update. The project would also help generate a list of other items to work on as well as next steps.
- Some Commissioners had been waiting for this project for 5 or 6 years. There were residential structures built in Milwaukie that would never have been built, had the residential development and design standards been done 6 years ago. As important as the Comp Plan was, this Code project has been wanted for a very long time.
 - This was more painful in that the City was asking people to do something different than they were used to, and Council also needed to make a decision that would have ramifications for Joe Public.
 - The direction staff was taking with this Code project was very good because there was a lot of outreach. NDA leadership groups have expressed interest in playing a role in the Code project. The project also had the appeal for many people to join in and see what a difficult process this would be because they were asking more from Milwaukie's citizens.

Commissioners offered various suggestions to refine the survey questions.

Ms. Mangle reminded about the discussion to broaden and design the different housing types in Milwaukie. Previously in Milwaukie, housing types and design were more about density or complying with Metro. Staff wanted the City to provide the different housing types that Milwaukie needed to be a healthy community; that people needed in the future.

- A lot of the public conversation would be about this issue. This needed to be more than a kind of esoteric conversation about the future, because specific goals were needed to shift the direction of design overall in the city.
- She distributed her top 10 things she wanted to address with the project, noting that the last item should state, "Allow ~~attached~~ **detached** ADUs" because the City already allowed attached ADUs.
- She asked for discussion about housing types/design and the Commissioners' top 10 list.

Chair Klein agreed more than half of the items on Ms. Mangle's list would probably appear on his list as well. Some of the more procedural items would not be on his list.

- He was uncertain about reducing the lot size for duplexes or the broader array of conditional uses.
- Half of Item #4 he did not like, which was to reduce lot coverage requirements; the half he did like was adding proportional (**inaudible**).

Commissioner Gamba liked the exact opposite on #4.

Commissioner Churchill:

- Agreed with Chair Klein. Setting minimum side lot setbacks results in a closer to zero lot line development; this was not in keeping with current standards, but may be the vision of where the city needed to be 20 years in the future. Although lot coverage was different than setbacks, they were tied together.
 - **Ms. Mangle** stated that because the lot coverage was so low in Milwaukie, it led to taller buildings.
- Believed a bulk and mass analysis could help control that. He agreed separating #4 into 2 questions was a good idea.

Commissioner Batey clarified that what was being asked was to increase lot coverage allowance, not reduce it, which would allow homes to be bigger on the property.

Commissioner Gamba stated a 7,000 sq ft space was required for permitted duplexes in an R-7 zone which did not make sense; this had nothing to do with setbacks. He was interested in the concept of being able to put 4 clustered homes on an R-10 or R-7 that then share a common area or garden area, for example. The current Code did not remotely allow this sort of thing. Ms. Mangle's #8 was high on his list of changes to make.

Chair Klein stated that the existing structures in his neighborhood were pretty close to the structures that would be there in 10, 20, or 50 years. He believed the City should expand or rezone areas so that different types of densities could be considered to accomplish certain goals.

- Allowing people to go for maximum lot coverage would be nearly impossible in some existing neighborhoods unless they were destroyed or someone brought a large tract or block of houses and bulldozed them to redesign them in that manner.
- People could take advantage of lot coverage to expand or build a house that would not be representative of a particular neighborhood, such as the (**inaudible**) where every aspect of that house did not (**inaudible**). Every possible dimension of the house was maxed out.

Discussion continued about items the Commissioners' wanted to address with the project and the survey as follows:

- Create a consciousness in development about how the sun strikes a property when placing a home on a given lot for the purpose of passive and active solar energy and growing area on the rest of the property. Too much energy was placed on looks, not on function. A form follows function approach should be adopted.
 - **Ms. Mangle** explained that procedurally, #3 regarding a 2-track review process would allow for a more discretionary review of more projects. Currently, all single-family homes and "needed housing" must go through a clear and objective building permit process, which limited how much discretion they could have. Different procedural tools were needed so that the discretionary process was considered as attractive, opening the door

for other design elements, including aesthetics, solar access, and site design that could be reviewed.

- Item #3 also tied into the Development Review application included with Ms. Shanks' tune-up Code project.
- Mass. Item 1 addressed many issues, such as some of the concerns with the Columbia Care Services Balfour House and parking in front.
 - **Ms. Mangle** clarified that the parking issue had been addressed.
- People would be informed of the online survey through the NDAs, the City's committees and commissions, as well as to a list of potential applicants; people who were denied pursuing applications for duplexes, ADUs, etc. Further suggestions were welcome.
- Blend Questions 8 and 9 into one; strike Question 9 and add some of those boxes to Question 8. The idea was to think about all the neighborhoods and locations rather than residential development in other neighborhoods. It was about their perspective on Milwaukie as a whole, not on neighborhoods other than their own.
 - Staff's intent was to test what people wanted in other neighborhoods.
 - Changing Question 12 as suggested to be about what character of the neighborhoods was worth preserving was an effective way to get at the same issue.
 - The questions were very informative as written. They would indicate what people wanted to happen, but eliminate the 'not in my back yard' component.
 - The question was not about whether respondents wanted development or not. When discussing single-family design, people tended to think everyone should have certain design elements, a sort of Craftsman-style house. However, those did not exist in most Milwaukie neighborhoods, so the definition of blending changes throughout the city.
 - The separate questions had some value, because they would reveal what neighborhood a respondent lived in; Question 8 was "within your neighborhood, what is your opinion." Historic Milwaukie residents were anticipated to want more of a blending.
 - Question 9 provided a different perspective on Question 12, clarifying whether blending depended on the neighborhood.
 - A different way to ask the question might be "when a successful development was found, what were some things that were successful about it, for example, it blended in, it was different, the orientation of the grid, it had adjacent retail, etc.?"

David Mealey, 5111 SE Lake Rd, stated he annexed into the City about 1½ to 2 years ago. He encouraged the Commission to include #7 to allow a broader array of uses in the design review. The letter he sent covered most of his arguments toward the issue.

- He was told the City planned to eventually annex Lake Road. More and more of the outskirts of unincorporated area would be R-10 zones along major arterials. It would be a good idea to allow conditional uses as permitted about a mile up the road on Lake Road just because by happenchance they were in an R-3 Zone.

7.0 Planning Department Other Business/Updates

7.1 Officer Elections

Ms. Mangle reminded that the Bylaws adopted last year stated that officer elections were to be held at the first meeting of the year. She described the roles of the chair and vice chair positions. Although the officers' terms expired on March 31, the Bylaws mandated elections at the first of the year.

Chair Klein noted that the Commission currently had one vacancy and his term would end March 31 after 7 years on the Commission.

- City Council was now appointing all commissioners and committee members differently. People had commented about being uncomfortable being asked the interview questions on television. Now, interested candidates would speak with the Mayor, City Manager, and the department head that was the liaison for that particular committee/commission. The Mayor would then make a recommendation to Council about appointing the candidate.

Ms. Mangle stated 2 applications had been submitted for the vacancies on the Commission that have been on hold due to changing the appointment process, which she hoped would be up and running soon and the positions filled.

The Commission discussed the challenges and procedural issues of being Chair, and offered their input about serving in the officer positions. The Commission agreed that having a 3-month overlap would allow the outgoing Chair time to train the new Chair. Officer elections would be held but newly elected officers would not assume their positions until April 1, which would provide continuity for upcoming hearings and a preparation time for the new officers.

Commissioner Gamba nominated Commissioner Batey for Planning Commission Chair. Chair Klein seconded the nomination. Commissioner Batey was unanimously elected Planning Commission Chair effective April 1.

Chair Klein nominated Commissioner Harris to continue as Planning Commission Vice Chair. Commissioner Wilson seconded the nomination. Commissioner Harris was unanimously elected Planning Commission Vice Chair effective April 1.

7.2 Annual meeting with City Council

Ms. Mangle noted that the annual meeting with City Council was not held last year because of all the changes and the absence of a City Manager. All commissions and committees needed to get back to meeting with Council once a year. March 1 was proposed as the meeting date. The Planning Commission would attend City Council's worksession. The purpose of the meeting was to discuss the annual work plan; not everyone had to attend, but attendance was encouraged.

8.0 Planning Commission Discussion Items

Ms. Mangle stated some activity had been noticed at Lovena Farms and she found that they were just building a big barn. They had subdivided the land with the County with full participation of the City. The County, City and the property owners all know that no development could be done that required installation of plumbing fixtures until they annexed into the City.

- The barn probably would not be allowed in a residential area if the property fell under the City Code because the accessory structures Code was pretty restrictive.
- Lovena Farms was planning to build and move houses, which would trigger annexation, because the homes would have to connect to the City's sewer line.

Chair Klein noted a house currently existed there that was not present 3 years ago. The County circumvented every law they had to allow Lovena Farms to build that house. Since it was not on City sewer, he assumed they put in a septic system.

- Lovena Farms had a large shared parking lot that he did not believe would be allowed under the City's current Code and built a structure that should have gone through the City's development review process rather than the County, who treated it as an existing structure so it would not have to be annexed into the City.
- Many issues existed with dividing the property at this point.

Ms. Mangle clarified that Lovena Farms installed the curb improvements on the property's frontage at the City's request when the land division was done to create the lots for each house. The land division was done in the County, but the road was a City street. The City would not have allowed such a land division.

- Except for the septic issue on the new house 2 years ago, the City had been working closely with County staff on all that had been happening over the last year. Until annexed into the City, Lovena Farms was subject to the County's Code and had rights to do the land division and build the barn.
- Development was planned, which was why the land division was done.

Chair Klein stated the County had facilitated Lovena Farms to accomplish many things not allowed in the County's Code. He agreed Lovena Farms was trying to grandfather things in before being annexed into the City.

9.0 Forecast for Future Meetings:

January 25, 2011

1. Public Hearing: Land Use and Development Review Code Tune-Up Amendments
2. Extension Request: Extension request for MLP-08-02 (Howe St partition)
3. Worksession: Annual work plan preparation and review of bylaws

February 8, 2011

1. Worksession: North Clackamas Park North Side Master Plan *tentative*
2. Worksession: Residential Development Standards project

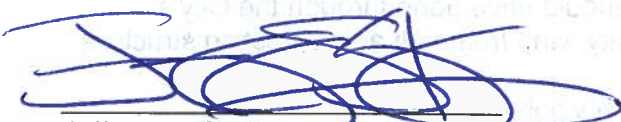
Ms. Mangle reviewed the meetings' forecast with these additional comments:

- Public notice had been sent to every City property owner for the January 25 hearing. She encouraged the Commissioners to contact Ms. Shanks with any questions.
- The extension request for the Howe St partition would not likely take place; making the partition null and void, the development would not occur as the developers were running out of time.
- The work plan and Bylaws could be discussed if time allowed after the hearing.

Meeting adjourned at approximately 8:33 p.m.

Respectfully submitted,

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



Jeff Klein, Chair



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday January 11, 2011, 6:30 PM

**MILWAUKIE CITY HALL
10722 SE MAIN STREET**

- 1.0 Call to Order - Procedural Matters**
- 2.0 Planning Commission Minutes** – Motion Needed
 - 2.1 October 26, 2010
- 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**
- 6.0 Worksession Items**
 - 6.1 Summary: Natural Resource Overlay Project briefing
Staff Person: Brett Kelter
 - 6.2 Summary: Residential Development Standards
Staff Person: Katie Mangle
- 7.0 Planning Department Other Business/Updates**
 - 7.1 Officer Elections
 - 7.2 Annual meeting with City Council
- 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:**
 - January 25, 2011
 - 1. Public Hearing: Development Review Process Tune Up Amendments
 - 2. Extension Request: Extension request for MLP-08-02 (Howe St partition)
 - 3. Worksession: Annual work plan preparation and review of bylaws
 - February 8, 2011
 - 1. Worksession: North Clackamas Park North Side Master Plan *tentative*
 - 2. Worksession: Residential Standards project

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
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

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, October 26, 2010
6:30 PM**

COMMISSIONERS PRESENT

Nick Harris, Vice Chair
Lisa Batey
Scott Churchill
Chris Wilson
Mark Gamba

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner

COMMISSIONERS ABSENT

Jeff Klein, Chair

1.0 Call to Order – Procedural Matters

Vice Chair Harris called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 August 24, 2010

Commissioner Batey noted that this was a good example of the need for speaking into the microphone, adding it was a good thing the meeting had been a worksession and not a hearing.

Commissioner Churchill moved to approve the minutes dated August 24, 2010, Planning Commission meeting minutes as submitted. **Commissioner Gamba** seconded the motion, which passed 4 to 0 to 1 with Commissioner Wilson abstaining.

3.0 Information Items

Katie Mangle, Planning Director, noted two items would be added to 8.0 Planning Commissioner Discussion Items, the draft letter to Judge Gray for the Commission's review and Commissioner Gamba's report about the conference.

- She briefly reviewed several changes to and the new features available on the City's new website. She noted several key items and responded to questions as follows:
 - Information about land use applications was now available well before they came before the Planning Commission. Instructions for accessing information from past packets had been sent via email.
 - Biking information was separated from the Transportation home page and now had its

own section with links to the bike map, current initiatives, and other biking-related items.

- All the projects that have come before the Commission were on the Projects page, such as the Natural Resources Overlay Project. This page included all the drafts the Commission has reviewed, information about Title 13, maps, and related materials requested like the Portland Plant List.
- Getting WiFi for City buildings was on the IT needs list, but currently only the Pond House has WiFi.
- Website updates used to go through the IST department, which had resulted in the prior limitations. The City hired a company to design and host the site, but staff was now empowered to make edits and updates. Alicia Stoutenburg was doing most of the work for the Planning Department, but each planner could make edits as well.
- Neighborhood District Association (NDA) pages were available. Some NDAs had their own websites, and a lot of the information on the City's new site had been transferred over from the old site. Whether NDAs could update their own page was unclear.
- The website was still a work in progress, but it had a lot of potential. She encouraged the Commission to suggest adding items that would be useful to them or the public.

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: Comprehensive Plan Discussion

Staff Person: Katie Mangle

Katie Mangle, Planning Director, introduced discussions regarding the Comprehensive Plan, which regarded several projects and discussions occurring in the City at this time. She displayed the Comprehensive Plan Land Use Map and presented a brief overview of the Comprehensive Plan's background and its role as the City's over-arching policy document. She noted these key points, and responded to questions as follows:

- Adopted after its last periodic review in 1989, the current Comprehensive Plan (Plan) was outdated. Milwaukie has been on the State's list to do a required periodic review of the Plan for sometime. The City needed the State's blessing to enter into periodic review because a lot of grant money was provided to help do that work.

- 76 • While staff has hoped to do the review for about five years, it has been delayed. One
77 delay was because staff was in the middle of the Transportation System Plan (TSP) and
78 could not accommodate the extra work. Now the State was having such severe budget
79 problems that several cities were told that their periodic reviews were on hold
80 indefinitely.
- 81 • Consequently, she was not sure when they would be able to do a bigger update;
82 however, that did not mean that nothing could be done now, only that no State resources
83 would be available. Over the next six months, she hoped staff could talk with City
84 Council and the City Attorney about what could be updated now.
- 85 • The Plan still had a lot of good content and a lot of its good policy direction had never been
86 implemented. The Natural Resources section was almost ahead of its time in terms of the
87 importance of restoration and providing incentives for property owners. Many of these
88 concepts were in the Plan as guidance policies. Much of the zoning Code work done over
89 the last three years had essentially been implementing the Plan.
- 90 • Significantly outdated portions included many inventories, such as historic resources,
91 buildable lands, parks, as well as the absence of a local wetlands inventory.
- 92 • Staff was experiencing some Plan policy issues on commercial lands and areas outside of
93 the City, especially with regard to coordination with the County. Even though the Plan
94 contained very strong policy on annexation and was allowing the City to do everything being
95 done currently, it did not help resolve more complex coordination issues.
- 96 • There were some real issues in Milwaukie currently that the Plan just did not address, such
97 as how a city the size of Milwaukie could be strong fiscally over the next 20 years, to
98 address education; implement deeper sustainability concepts; preserve residential areas but
99 also strengthen neighborhoods by strengthening some commercial nodes.
- 100 • A complete Comprehensive Plan project would be a multi-year effort, but the Code projects
101 the Commission was going to start doing would involve long-range planning. In the past few
102 years, they had been able to work on projects at the Code level because they had really
103 strong policy direction, but now they would need to have conversations at both levels, which
104 would involve more public involvement and policy level work.
- 105 • Making Code and zoning changes that were in direct conflict with the Plan was not possible.
- 106 • For example, the Plan very specifically states that no expansion of a commercial zone is
107 allowed to take over a residential zone. One property owner with a home occupation on
108 an arterial, and not in the middle of a neighborhood, wanted to turn it into a commercial
109 property. Most would say that it would work, but there was no room for discussion. The

property owner could not apply for a zone change, because the Plan would have to be changed and the City would have to do both levels of analysis, which was a big job.

- All the Code amendments being done either fell in line with the Plan; otherwise language adjustments, policy additions, or minor changes were made to ensure everything agreed.

- At this time, staff wanted to fix the Plan piecemeal as needed, the extent to which that could be done depended on the issue.

Discussion continued about the Plan and its limitations as follows:

- Current limits on commercial uses in residential zones did not support the concept of 20-minute neighborhoods, wherein residents could access all services needed for daily life within a 20-minute walking distance.
- Zoning could facilitate but not create such neighborhoods. Density and demographics played a role in attracting businesses and services. High density housing did not bring better services; better demographics, i.e. education, income levels and age, and more livability are key factors in attracting some services.
- The City had some needed elements in place with neighborhood commercial and limited commercial zones, but not the policy direction to allow adjacent properties to do similar uses, because of limits on expanding commercial or to allow anything on those sites that did not have to be reviewed by the Commission. The City had some odd limitations in place that could be reviewed without overhauling the entire Plan in order to achieve these goals.
- The Commercial Core Enhancement Project and the Murphy & McFarland site in central Milwaukie regarded areas where a broader look was needed for the future. It was a different kind of project than the smaller Code projects because the work involved going out into the neighborhoods and talking to more people. They needed to ramp up to have those needed types of conversations.
- The defined zones on the displayed Land Use Map went back to the 1960s. The categories did not look well defined by current standards. Generally, the zoning outside of downtown had not changed much in terms of how the land was classified. A lot of work was done in the 1980s to solidify the zones.
- For example, in the King Rd area and along Hwy 224, the Plan's policy essentially said to build strip mall development with big parking lots, but Commissioners over time have said that was not wanted as these areas redevelop. Some items in the Sign Code went

144 back to this issue as well.

145 • It was not just a Code problem but a Comprehensive Plan problem. The Plan did not
146 reflect what many in the community wanted to see. Just tweaking the Code would not be
147 enough, they needed to take a step back and talk about the vision.

148 • She encouraged the Commissioners to start familiarizing themselves with the Plan,
149 especially with Chapter 4 the Land Use section, and to consider the Plan as critics. Just as
150 the Commission has been imbued with a lot of Code and policy work at the legislative Code
151 level, they needed to be discussing it at this level as well, which would be more fun because
152 it involved how the community could be changing, growing, and shifting, or not shifting and
153 being protected as needed.

154 • The projected time frame for doing the major Plan review was 2011-2014. City Council
155 would determine the scope and timeframe for this project. Decisions needed to be made
156 about how to go about amending the Plan, if Council wanted to do it.

157 • Plan changes could be done similarly to the Code changes, where small sections could
158 be addressed each year or as the City could afford. Some sections would be easier than
159 others. Some would interest the State and regional agencies more than others and
160 involve certain requirements.

161 • There were things that could be done and the Commission should be at the forefront in
162 thinking through how to tackle this comprehensive project.

163 • Further discussion about the map regarded what various designations meant, how the Plan
164 had impacted development to date, and explanations of various uses, neighborhoods and
165 their zoning as depicted on the map, including existing nonconforming and conditional uses.
166 A use map would reveal different patterns than this Land Use designation map was
167 showing.

168 • Areas on the map were identified where the current zoning was not implementing the
169 Plan. The City did not have any public zoning; everything was commercial, residential, or
170 industrial, even though the Plan designated some land as public.

171 • Public areas would include parks and schools. The map needed updating as the
172 Waldorf School was still identified as a public site, while newer parks were not
173 depicted.

174 • Circulation changes like bike paths could be used to better connect the city, which
175 was divided by the industrial area, but also to connect downtown and the riverfront to
176 the neighborhoods to reinforce those nodes if the neighborhoods would want to
177 support that.

- Residential/Office/Commercial zones were the most versatile and tended to create walkable urban neighborhoods, but the City did not have the right design standards in place to manage such uses and how they would mix together.
- Ms. Mangle would work with Mr. Monahan to get started on a Comprehensive Plan project, but nothing was ready to go to Council yet. A Metro grant may be available soon, so over the next year commercial area issues would be addressed should Council accept the grant.
- Council would be doing some goal setting in January, which might be a good time for the Commission to make some suggestions about Plan updates.
- Addressing the Plan now would be beneficial so the City did not have to be reactive when development ultimately proceeds, such as on the Murphy and McFarland sites.
- Milwaukie was in compliance with Metro's Functional Plan. Title 13 was the exception, which was why the Natural Resources Project was being pursued.
- While State and Metro requirements were in place, Milwaukie was able to develop its own standards. The Residential Design Standards were one example.

6.2 Summary: Residential Standards Project Set-Up

Staff Person: Katie Mangle, with guest Marcy McInelly of SERA Architects

Ms. Mangle stated the worksession was to discuss ideas about the process involved with the Residential Design Standards Project and the roles of the community and Planning Commission. The Planning Commission, City Council, and Design and Landmarks Committee (DLC) have wanted this project for a long time. As a State grant funded project, the City only had 6 to 8 months to finish project. That same State grant was funding the Development Review Tune-Up Project, which would help lay the groundwork for this work. Resources were limited however, even with the grant. She presented the staff report, which noted the priorities to be addressed by the Residential Design Standards.

- The consultants on the project were Angelo Planning Group for the Code-writing portion, and Marcy McInelly and her colleagues at SERA Architects for the design side. Having a good process that included the right people early on should make the later Code-writing work relatively easy if staff and the consultants know the policy goals. Many good models were available from Portland, Canby, and Clackamas County.

Marcy McInelly, SERA Architects, introduced herself and provided a brief background about herself, her experience, and SERA Architects. She offered the following comments:

- Often conversations with the community devolve into density, housing style, and the kinds of

people living in different housing. Most housing being built was designed for demographics that no longer exist. Housing choices often do not accommodate aging parents or attracting grown children back to the community.

- Having complex housing choices in the community make certain things more possible. Density, appearance, and Code provisions could be discussed after the community defined needs and vision.
- SERA would focus the conversation to learn what Milwaukie residents saw as the future of their community, and what kind of housing was needed to serve generational changes and all the different demographic groups. The community would consider why housing choice is important, and how having options might benefit citizens personally. SERA would initiate the conversation by telling stories about life patterns and how having different housing options might have impacted peoples' lives differently. She invited the Commission to offer their own stories.

Ms. Mangle reviewed the recommendation to have a Commission subcommittee for the project as outlined on 6.2 Page 14 of the packet. Debate regarding the project and the work being done would benefit from having NDA members, property owners as well as a City Councilor and DLC member in the room to provide input and policy direction.

- She noted that Ms. McInelly had suggested the City initiate the discussions with a town hall type meeting to invite more people to talk about their stories, housing in Milwaukie, and to identify fears and needs in order to frame the whole conversation from the ground up. It would be almost opposite from a Code project, more of a story-telling project that would inform the policy, which would then inform the Code.

The Commission, Ms. McInelly, and Ms. Mangle continued discussion which included these comments:

- The town hall-like meeting would include discussion about increasing housing options within the community and why that was important. Housing types included accessory dwelling units (ADUs), detached single-family units, townhouses, apartment or condominium flats, and cottage clusters, an older model that has been zoned out of most codes but was regaining popularity.
- Taking a virtual or actual tour of some of the housing options available was suggested.
- Citizens seem to want more choices and less segregation of property types, e.g. single-family houses in one neighborhood and apartments in another. Many were asking to add an

accessory dwelling unit to their single-family property.

- Retirement-age couples wanting to downsize often have to move out of their neighborhoods or even their city to find alternate housing types. The new approach is to provide lots of choices in one city.

- A large division currently exists between apartments or affordable housing and home-ownership housing. One benefit of blending housing types was that home ownership and rental properties become more integrated.

- The City does have some more integrated neighborhoods. The current Code project was addressing how not to zone them out of existence. Design issues would have to be addressed.

- Having a larger public meeting before the subcommittee started was preferred to talk about housing options to the community as a whole. Citizens also expect to be involved after all the public meetings held for the TSP.

- The meeting might help identify citizens who could serve on the subcommittee.

- The pros and cons of a larger public meeting versus stakeholder interviews were debated. Selection of interviewees would likely be criticized, but allowed less outgoing individuals to provide input. Larger public meetings engaged further ideas as attendees fed off one another's comments.

- Having a combination of both processes was suggested; have a public meeting and follow up with individual interviews, including with those that attended the meeting, to obtain a good data sampling.

- Staff could also follow up with developers coming to the Planning Department counter. Developers could also provide stories to share, anonymously, about the housing types they are trying to create and why.

- The process would provide opportunity to educate NDA Land Use Committee (LUC) chairs about what other communities are doing to create nodes and strengthen neighborhoods. The chairs could then obtain feedback from the NDAs.

- The City could ask for input about residential and land use alternatives, the strengths and weaknesses of each neighborhood, and offer ways to support the NDAs. Promoting a process that generated ideas from the NDAs and community to the Planning Department would strengthen relationships.

- Involving outlying neighborhoods was also important following all the planning done with light rail and in downtown and historic Milwaukie.

- **Ms. Mangle** cautioned that no rezoning or density changes would be done and the

Commission could clarify that during conversations with citizens. She reminded that policies did not necessarily have to change. The project would provide a chance to have discussions that may or may not result in changes.

- The role of government in this process could impact community relationships in the future. They wanted to be sensitive to not lead the community, but educate and facilitate the discussion without compromising their responsibility to provide guidance.
- The Commissioners and the subcommittee members should spend some time in the neighborhoods to gain a better understanding of each area's identity, strengths and weaknesses. Bike tours would provide a unique opportunity to do so.
- Vice Chair Harris noted that as an NDA leader, he has found that citizens are tired of being led. They want to be asked for input, not presented with information.
- Educating NDAs about successful neighborhood models would be a softer approach.
- The City wanted to get information on the range of issues, but this project would not solve all the problems in the city. It would provide opportunity to understand problems to address in the future.
- Most development inquiries regard additions and ADUs in residential zones, which would be relevant citywide, but some issues would not affect certain areas of the city, like lower density areas.
- Community responses needed to be quantified. Perhaps a carefully designed survey could be conducted to identify what percentage of the population valued certain aspects over others, such as retirement-oriented development. Demographic data the City already had on hand might be helpful as well as market analyses, or information used by real estate developers when targeting areas for a certain housing type.
- Only conducting a survey could result in wrong information unless a specific company was used who knew how to reach a certain representative sample.
- Following detailed education, specific questions could be asked about the type of housing desired which would direct zoning decisions later.
- It was important that zoning or mass and bulk not drive the visioning conversations.
- The current zoning created some unintended uses; it would be important to analyze the potential impact of future changes. The Code had inadvertently pushed certain kinds of ownership and rental patterns.
- An illustration was circulated to give the Commission an idea of the renderings that would be generated during the process.
- National trends reveal not enough housing is being created for the baby-boom tsunami as

they approach retirement. The home-building industry and various cities' codes were not keeping up with the desires of the changing population. Certain code restrictions also prohibit different housing types. Additional statistics were as follows:

- Both baby-boomer retirees and the millennium generation want smaller housing options without being pushed into multi-family properties.
- Families with young adults who continued to live at home want more options for additions and remodels.
- Older retirees might need independent living options near support services, rather than being forced into assisted living.
- Walkability and safety were also desired features for housing.
- Manufacturers were starting to produce prefabricated accessory dwelling units and other options; the Code might need to be revised to accommodate these new options.
- Addressing the needs of families who have lived in the community for generations should be considered, as well as providing more transition options to allow such family members to stay in the community.

- The City and SERA would want to stimulate a conversation in the greater community similar that of the Commission, not focused on density or zoning codes, but on how people live in Milwaukie, and how they imagined people might want to come live in Milwaukie in the future to think about the community in a different way.
- The process should consider the jewels in every neighborhood and enforce those fabrics rather than mandate a vision or formula on the neighborhood.
- Many lots in Milwaukie's neighborhoods were big enough to easily accommodate a bigger house, ADU, or duplex; many big lots were not being maximized. Development would come into those areas more easily than waiting for multiple lots to come together for a big project, and would be more acceptable to the neighborhoods. Local investment was another factor.
- The City of Portland waived its SDC fees on ADUs, knowing whether applications had greatly increased would reflect whether there was a strong desire for wanting ADUs.
- City planners kept phone logs of calls from citizens and noted various requests, which could be reviewed to identify trends or patterns.
- Another conversation would involve how much could be customized to accommodate the differences in neighborhoods, and historical sections, lot sizes, proximity to natural resources, etc. A toolkit could be created that was sensitive to the differences, but also maintained a cohesive overall vision for the city.

348

349 **Ms. Mangle** concluded with the following remarks:

- 350 • The City already had a Scope of Work with the consultants that meshed well with the IGA
351 with the State. The consultants' time would expire at the end of June 2011.
- 352 • The Commissioners' packets contained an overview of the project and its timeline.
- 353 • Certain aspects of the project could begin, such as mapping and interviewing, prior to
354 discussions with Council. She would be briefing Council on the Development Review Tune-
355 Up and Residential Design Standards projects on November 16th.
- 356 • City Manager Bill Monahan would help bring the newly elected Council up to speed on
357 why these projects were important.
- 358 • Land use training would be held for the NDAs on November 4th, where both projects would
359 be addressed briefly as well.

360

361 **7.0 Planning Department Other Business/Updates – None.**

362

363 **8.0 Planning Commission Discussion Items**

364

365 **Commissioner Churchill** reported that he did some research regarding LED signs following
366 the October 12 public hearing. Many interesting alternatives exist that were not just all LED
367 exposed light sources. He believed Ms. Mangle had made the right decision. Other cities
368 consider scale and illumination sources that do not need to be exposed LEDs. He had
369 forwarded the information to the Chair Klein and would to staff as well.

370

371 **Commissioner Batey** said she took pictures of Lake Oswego gas station signs and reported
372 that none were more than 4 or 5 ft tall.

373

374 **Commissioner Churchill** noted that scale was an important issue in progressive communities.
375 He wanted to start phasing out pole signs. Signage was a bellwether about how communities
376 care about their visual environment. Another was scale of houses and residential
377 appropriateness of mass and bulk. He believed things could be done in the City's planning
378 regulations to help get continuity of neighborhood mass and scale. Signage was an important
379 part of that.

380

381 **Vice Chair Harris** believed that broadening the sign discussion was important because the

382 Commission would be discussing it again soon.

383

384 **Ms. Mangle** introduced a letter regarding the Appeal of Director's Interpretation of October 12,
385 2010, a draft of which had been sent out the previous day and received varied responses.
386 Commissioner Batey helped write revisions to make the letter appropriately more neutral on
387 some points. The revised letter had been emailed a few hours ago and was circulated for
388 review.

389

390 Discussion amongst the Commission and Ms. Mangle was as follows:

- 391 • Concern was expressed that the letter might actually be too neutral.
- 392 • The municipal judge was typically very lenient, which should be considered. The letter
393 encouraged the judge to grant latitude to the Applicant.
- 394 • Whether the letter would have any impact on the case was uncertain. The court case was
395 about the fact that Mr. Kanso did not take any action when cited. He pursued the Director's
396 Interpretation, but not until after the deadline.
- 397 • Having the two processes overlap was messy and should be avoided in the future. They
398 were really very separate issues, so the outcome was uncertain.
- 399 • The purpose of the letter was to say that although the Commission had voted that the
400 Appellant had violated the Code, the Commission questioned whether the Code as written
401 should be the City's policy, and the judge should take that into account.

402

403 The Commission consented to send the letter to the judge as drafted. Commissioner Wilson
404 abstained.

405

406 **Ms. Mangle** stated Mr. Marquardt would deliver and explain the letter to the judge. Mr. Kanso
407 would receive a copy and would probably enter it into the record in support of his case.

408

409 **9.0 Forecast for Future Meetings:**

- 410 November 9, 2010 1. Worksession: Water Master Plan *tentative*
- 411 2. Worksession: Land Use and Development Review Process
- 412 Tune-Up (Briefing #6): Review of Draft Chapters: Conditional
- 413 Uses, Variances, Nonconforming Situations, Amendments,
- 414 Development Review and Procedures
- 415 November 23, 2010 1. Tentatively cancelled

Ms. Mangle reviewed the upcoming meetings with these additional comments:

- The Commission would receive a lot of Code chapters to read for the November 9th meeting. Staff would get the drafts out on Friday so the Commissioners would have an extra weekend to review them. The staff report and rest of the packet would follow on the regular schedule on Tuesday. The Residential Design Standards subcommittee would meet on Monday.
- The Water Master Plan would be a preliminary briefing from the Engineering Department with an anticipated hearing for adoption in January.
- The November 23, 2010 Planning Commission meeting was tentatively cancelled unless more time was needed to discuss the Code Tune-Up project.

Commissioners Batey and Churchill could not attend the November 23rd meeting.

Meeting adjourned at 8:32 p.m.

Respectfully submitted,

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

Jeff Klein, Chair



To: Planning Commission
Through: Katie Mangle, Planning Director *KM*
From: Brett Kelter, Associate Planner
Date: January 4, 2011, for January 11, 2011, Work session
Subject: Natural Resource Overlay Briefing #8

ACTION REQUESTED

None. This is a briefing for discussion only to prepare the Commission for the amendment process related to City's Natural Resource Overlay (NRO) project.

BACKGROUND INFORMATION

A. History of Prior Actions and Discussions

- **July, 2008:** Work session briefing on requirements of Metro's Title 13, Nature in Neighborhoods.
- **October, 2008:** Work session briefing on options for the City to comply with Title 13.
- **July 14, 2009:** First of two-part work session briefing on project approach.
- **July 28, 2009:** Second of two-part work session briefing on project approach.
- **April, 2010:** Work session briefing on project progress (including review of Draft 2 of proposed code and maps).
- **June, 2010:** Joint meeting with NRO Advisory Group to discuss significant issues.
- **August, 2010:** Work session briefing on project progress (including review of Draft 3 of proposed code and maps).
- **September, 2010:** Work session briefing, with discussion focused on adjustments/variances and trigger distance for applicability of the revised natural resource regulations.

B. Project Overview

The purpose of the NRO project is to bring the City into full compliance with Statewide Land Use Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) and Metro's Title 13 (Nature in Neighborhoods). The proposed rules designate Habitat Conservation Areas (HCAs) for protection, all of which are contiguous to existing Water Quality Resource (WQR) areas that the City already regulates.

Following direction provided by the Planning Commission and City Council, Staff's efforts have focused on incorporating the model HCA ordinance provided by Metro with the existing WQR

rules established in Milwaukie Municipal Code (MMC) Section 19.322. Staff has also been modifying the regional HCA map, making adjustments as appropriate and combining it with the existing map of WQR areas.

The NRO project's public involvement component has yielded valuable feedback for the draft code and maps. An informal advisory group comprised of participants representing a broad array of overlapping interests (including property owners, public agency representatives, and natural resource experts) has reviewed multiple drafts of the code and maps and discussed a number of key issues. A community-wide Open House will be held just prior to this work session to present the project to the larger community, providing additional feedback as staff prepares the code and maps for the adoption process.

C. Overview of Draft #4

While the Commentary document fully explains the draft code language, the following is a broad summary of the proposed policies:

- On lots that contain or are within 100 ft of mapped resources, development activity that impacts the resource area may trigger these regulations.
- As long as no new development is proposed, property owners are not required to restore resource areas and are not prevented from maintaining existing conditions.
- Water Quality Resource (WQR) areas and Habitat Conservation Areas (HCAs) are shown on the WQNR map. If an applicant believes the map is inaccurate, there is a process for correcting or updating it.
 - o WQR areas are, generally, 50 ft-wide vegetated corridors along or around protected water features such as streams and wetlands. The map has been slightly modified to incorporate recent wetland delineations and water body locations.
 - o HCAs shown on the WQNR map are based Metro's original resource inventory. The City has slightly modified the regional map based on recent aerial photography and field research.
- Different activities are categorized into lists to determine how each is regulated: exempt, prohibited, "special" uses, permitted with Type I, Type II, or Type III review.
 - o Generally, projects with more potential for impacts are subject to Type III (Planning Commission) review.
 - o Many projects that include a small disturbance or stay at least 50 ft from a water body can be permitted through an administrative process.
- Most projects will trigger a requirement to provide a Construction Management Plan, in which the applicant will explain how they will protect the nearby resource.
- Natural Resource Management Plans, which outline restoration or enhancement projects, will be permitted through a streamlined process.
- Mapped resource areas must be taken into consideration during the land division and lot line adjustment processes, with some flexibility regarding when mitigation is required for disturbing the resource.
- Development standards protect water quality during construction and define the type of mitigation that is required when an activity impacts the resource.
 - o Non-discretionary review standards may be used if a project is only impacting HCA resources and meets certain criteria.

- o Discretionary review standards are used when a proposed activity requires Type III review or cannot meet the non-discretionary criteria.
- Properties that contain mapped resources are burdened with more responsibility to avoid impacting a natural community asset, so these properties are eligible for additional flexibility.
 - o Some adjustments are allowed by-right, as an incentive for applicants to minimize a project's impacts on a designated natural resource area. These are clear and objective allowances, to be administered by staff.
 - o Requests to deviate from particular standards require a standard variance request (MMC 19.700).
 - o Properties that contain mapped resources will be allowed to “cluster” residential development, following review by the Planning Commission. Clustering enables an applicant to develop a property to its normally allowed density while concentrating the dwelling units to minimize impacts to the resource.

PREPARING THE DRAFT PROPOSAL FOR HEARING

Staff is in the final stages of refining the draft amendments for adoption. The latest versions of the draft code and commentary documents and the WQNR map are attached to this report (Attachments 1, 2, and 3, respectively). The commentary document (see Attachment 2) explains the policies and may be the best way for the average person to understand the proposed amendments.

Please review these documents and identify any specific questions or issues staff should address and resolve prior to beginning the adoption process. Comments should be forwarded to staff no later than **January 31**.

Staff is also seeking advice from the Planning Commission on how best to prepare for the adoption process. For those Commissioners who are not able to attend the Open House event on January 6, staff will report on the event and will share highlights and critical feedback. Participants in the Advisory Group will also be invited to the January 11 work session to share their thoughts on the latest draft code and maps and to discuss any remaining questions or concerns.

The working schedule for this project in early 2011 is as follows:

- January 6: Community Open House
- January 11: PC work session
- January 18: CC work session
- January 21: Notice to DLCD of intent to adopt amendments
- March 8: PC hearing (recommendation on adoption)
- April 19: CC hearing (adoption)

ATTACHMENTS

Attachments are provided only to the Planning Commission unless noted as being attached. All material is available on the project website at: <http://www.ci.milwaukie.or.us/planning/natural-resource-overlay-project>

1. Draft 4 of Proposed WQNR Code (MMC Section 19.322)
2. Commentary on Code Draft 4
3. Draft 5 of Proposed WQNR Map

TITLE 19 ZONING**CHAPTER 19.300 USE ZONES****Section 19.322 Water Quality and Natural Resource Overlay****Subsections**

- 322.1 Intent
- 322.2 Coordination with Other Regulations
- 322.3 Applicability
- 322.4 Exempt Activities
- 322.5 Prohibited Activities
- 322.6 Activities Permitted Under Type I Review
- 322.7 Activities Permitted Under Type II Review
- 322.8 Activities Permitted Under Minor Quasi-Judicial Review
- 322.9 Construction Management Plans
- 322.10 Natural Resource Management Plans
- 322.11 Special Uses
- 322.12 Land Division and Property Line Adjustments
- 322.13 Development Standards
- 322.14 General Discretionary Review
- 322.15 Adjustments and Variances
- 322.16 Boundary Verification and Map Administration

19.322.1 Intent

- A. Section 19.322 provides protection for water quality resources under Statewide Land Use Planning Goal 6 and Sections 1 - 4 of Title 3 of the Metro's Urban Growth Management Functional Plan (UGMFP). Section 19.322 also provides protection for natural resources that have been identified for the purposes of implementing Statewide Planning Goal 5 relating to significant natural riparian, wildlife, and wetland resources and Title 13 of the UGMFP
- B. Many of Milwaukie's riparian, wildlife, and wetland resources have been adversely affected by development over time. These regulations seek to minimize additional adverse impacts and to restore and improve resources where possible while balancing property rights and development needs of the city.
- C. It is the intent of Section 19.322 to:
 - 1. Establish Water Quality Resource (WQR) areas to protect the functions and values of riparian and wetland resources at the time of development.

2. Protect and improve the functions and values that contribute to water quality and to fish and wildlife habitat in urban streamside areas. These functions and values include, but are not limited to:
 - a. Vegetated corridors to separate protected water features from development.
 - b. Microclimate and shade.
 - c. Stream flow moderation and water storage.
 - d. Water filtration, infiltration, and natural purification.
 - e. Bank stabilization and sediment and pollution control.
 - f. Large wood recruitment and retention and channel dynamics.
 - g. Organic material resources.
 3. Establish Habitat Conservation Areas (HCAs) to implement the performance standards of Title 13 of the UGMFP for riparian areas and fish and wildlife habitat and to protect significant local Goal 5 resources such as wetlands.
 4. Provide non-discretionary (clear and objective) standards as well as a discretionary review process, applicable to development in HCAs, in accordance with Goal 5.
 5. Allow and encourage habitat-friendly development while minimizing the impact on water quality and fish and wildlife habitat functions.
 6. Permit residential cluster development to encourage creative and flexible site design that is sensitive to the land's natural features and adapts to the natural topography.
 7. Provide mitigation standards for the replacement of ecological functions and values lost through development in WQR areas and HCAs. This includes restoration of designated natural resource areas that are temporarily disturbed during development, as well as mitigation for permanent disturbance of those areas as a result of development.
 8. Preserve existing native vegetation against removal and replacement with lawns or gardens or other non-native plantings.
- D. The water quality and natural resource area regulations allow development in situations where adverse impacts from the development can be avoided or mitigated and where the strict application of these rules would deny reasonable economic use of property.
- E. It is not the intent of Section 19.322 to:
1. Impose any obligation on property owners to restore existing developed sites to pre-development or natural conditions when no new activity is proposed.
 2. Impose any hardship or limitation against the continued maintenance of existing legal site conditions.
 3. Apply to activities that do not affect WQR areas or HCAs.
 4. Prohibit normal lawn and yard landscape planting and maintenance. Normal lawn and yard planting and maintenance does not include the planting of invasive non-native or noxious vegetation, including but not limited to species listed as "nuisance" plants or "required eradication" plants on the Milwaukie Native Plant List.
- Section 19.322 is to be interpreted consistently with this intent.
- F. Nonconforming conditions that were legally existing for WQR areas as of December 17, 2002, or that were legally existing for HCAs as of *[insert new adoption date]*, and that are

nonconforming solely because of Section 19.322 shall not be subject to the limitations of MMC Chapter 19.800 Nonconforming Uses. However, any expansion of a nonconforming condition within a WQR area or HCA shall be subject to the applicable standards of Section 19.322.

- G. The Milwaukie Water Quality and Natural Resource Map (hereafter WQNR map) is adopted by reference. The WQNR map shall be used to determine the applicability of Section 19.322 and shall be administered in accordance with Subsection 19.322.16.
- H. A document or other list used to identify native, nuisance, and prohibited plants shall be maintained by the Planning Director and shall be referred to as the "Milwaukie Native Plant List."
- I. A document or other list used to identify chemicals that have been demonstrated to be detrimental to water quality and habitat health shall be maintained by the Planning Director and shall be referred to as the "Milwaukie Chemicals of Concern List."

19.322.2 Coordination with Other Regulations

- A. Implementation of Section 19.322 is in addition to and shall be coordinated with MMC Title 19 Zoning, Title 18 Flood Hazard Regulations, and Chapter 16.28 Erosion Control.
- B. For properties along the Willamette River, nothing in Section 19.322 shall prohibit the maintenance of view windows authorized under MMC Section 19.320 Willamette Greenway Zone.
- C. Except as provided for in Subsection 19.322.2.B, provisions of Section 19.322 shall apply where they are more restrictive than MMC Section 19.320 Willamette Greenway Zone.
- D. Development in or near wetlands and streams may require permits from the Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers (Corps). If a federal permit is required, a water quality certification from the Oregon Department of Environmental Quality may also be required. The Planning Director shall notify DSL and the Corps when an application for development within streams and wetlands is submitted. Because these agencies may have more restrictive regulations than the City, applicants are encouraged to contact them before preparing development plans.
- E. The requirements of Section 19.322 apply in addition to all applicable local, state, regional, and federal regulations, including those for wetlands and flood management areas.

19.322.3 Applicability

- A. The WQNR map shall provide a baseline for determining the applicability of Section 19.322 for any proposed activity. The City shall use the latest available aerial photographs, a copy of the applicable section of the WQNR map, and, in the case of WQR areas, the parameters established in Table 19.322.16-1, to determine whether a proposed activity on a given property will trigger any requirements of Section 19.322. If a property owner or applicant believes that the WQNR map is inaccurate, they may propose corrections according to the standards established in Subsection 19.322.16.
- B. Natural resources are designated on the City's official WQNR map as follows:
 - 1. Water Quality Resource (WQR) areas, which include protected water features and their associated vegetated corridors, as specified in Table 19.322.16-1. The vegetated corridor is a buffer around each protected water feature, established to prevent damage to the water feature. The width of the vegetated corridor varies depending on

the type of protected water feature, upstream drainage area served, and slope adjacent to the protected water feature. The WQNR Map is a general indicator of the location of vegetated corridors; the specific location of vegetated corridors must be determined in accordance with Table 19.322.16-1.

2. Habitat Conservation Areas (HCAs), which include significant Goal 5 wetlands, riparian areas, and fish and wildlife habitat. HCA locations on the WQNR map are assumed to be correct until demonstrated otherwise; verifications and corrections shall be processed in accordance with the procedures established in Subsection 19.322.16.B.
- C. The regulations in Section 19.322 apply to all properties containing a WQR area and/or HCA (including any locally significant Goal 5 wetlands or habitat areas identified by the City of Milwaukie) as shown on the WQNR map.
 - D. As specified in Table 19.322.3-1, the requirements established in Subsections 19.322.9 for construction management plans apply to properties that do not contain but are within 100 feet of a WQR area and/or HCA, as shown on the WQNR map, when more than 150 square feet of disturbance is proposed.
 - E. Proposed activities that occur more than 100 feet from a WQR area or HCA, as shown on the WQNR map, do not require review under the provisions of Section 19.322.
 - F. Those portions of streams, creeks, and other protected water features that appear on the WQNR map but are enclosed in underground pipes, culverts, or similar structures are not subject to the provisions of Section 19.322.
 - G. If more than 150 sq ft of area on the subject property will be disturbed in conjunction with a proposed activity listed as exempt in Subsections 19.322.4.A or 4.B, a construction management plan shall be submitted according to the provisions of Subsection 19.322.9. This requirement applies even when the proposed activity will not occur within a designated natural resource area, in accordance with Table 19.322.3-1.
 - H. The requirements of Section 19.322 apply as shown in Table 19.322.3-1.

Table 19.322.3-1 Applicability of Requirements of Section 19.322		
Situations/activities that trigger 19.322	Prepare Construction Management Plan (19.322.9)	Comply with the rest of 19.322
On properties that include a designated natural resource area (WQR area and/or HCA)		
Activities listed as exempt in 19.322.4.A <i>(exempt for both WQR areas and HCAs)</i>	No, unless more than 150 sq ft of disturbance is proposed	No
Activities listed as exempt in 19.322.4.B <i>(exempt for HCAs only)</i>	No, unless activity is within 100 ft of WQR area and more than 150 sq ft of disturbance is proposed	No
Non-exempt activities outside of WQR area and HCA	No, unless activity is within 100 ft of WQR area or HCA and more than 150 sq ft of disturbance is proposed	No
Non-exempt activities within WQR area or HCA	Yes	Yes
On properties that do not include a designated natural resource area but are within 100 ft of a WQR area or HCA		
Activities listed as exempt in 19.322.4.A <i>(exempt for both WQR areas and HCAs)</i>	No, unless more than 150 sq ft of disturbance is proposed	No
Activities listed as exempt in 19.322.4.B <i>(exempt for HCAs only)</i>	No, unless activity is within 100 ft of WQR area and more than 150 sq ft of disturbance is proposed	No
Non-exempt activities within 100 ft of a WQR area or HCA	No, unless more than 150 sq ft of disturbance is proposed	No

- I. Activities that are not exempt as per Subsection 19.322.4 or prohibited as per Subsection 19.322.5 are subject to the Type I, Type II, or minor quasi-judicial review process as outlined in Table 19.322.3-2.

Table 19.322.3-2 Types of Process Review for Various Activities			
Activity (and applicable code sections)	Type of Review Process		
	Type I (19.1011.1)	Type II (19.1011.2)	Minor Quasi-Judicial (19.1011.3)
Construction management plan (19.322.9)	√		
Agency-approved natural resource management plans (19.322.10.A and C)	√		
Independent natural resource management plans (19.322.10.B and C)		√	
Limited tree removal (19.322.6.B)	√		
Activities within HCA that meet non-discretionary standards (19.322.13.D)	√		
Non-emergency abatement of nuisances or violations (19.322.6.E)	√		
Special use activities (19.322.7.A and 19.322.11)		√	
Limited disturbance to WQR areas (19.322.7.C)		√	
Property line adjustments that balance the HCA distribution (19.322.12.E.1 or 2)	√		
Property line adjustments that otherwise limit HCA disparity (19.322.12.E.3)		√	
Low-impact partitions or replats (put designated natural resource area in separate tract) (19.322.12.G)		√	
Other partitions, replats, subdivisions, and development activities (19.322.8, 19.322.12.H or I, and 19.322.14)			√
Boundary verification (19.322.16)	√		

- J. For any proposed development or activity that will require minor quasi-judicial review, a pre-application conference is required. For any proposed development that will require Type II review, a pre-application conference or meeting is recommended.

19.322.4 Exempt Activities

A. Exemptions Within All Designated Natural Resource Areas

The following activities are exempt from the provisions of Section 19.322:

1. A building permit for a phased development project for which the applicant has previously met the application requirements of Section 19.322, including the provision of a construction management plan as per Subsection 19.322.9, so long as the building site for new construction was identified on the original permit and no new portion of the WQR area and/or HCA will be disturbed.
2. Stream, wetland, riparian, and upland enhancement or restoration projects and development in compliance with a natural resource management plan or mitigation plan approved by the City or by a state or federal agency.
3. Landscaping and maintenance of existing landscaping. This exemption extends to landscaping activities that do not involve the removal of native plants or plants required as mitigation, do not involve the planting of vegetation identified as “nuisance” or “required eradication” species on the Milwaukie Native Plant List, and do not produce an increase in impervious area or other changes that could result in increased direct stormwater discharges to the WQR area.
4. Removal of plants identified on the Milwaukie Native Plant List as “nuisance” or “required eradication” species and/or the planting or propagation of plants identified on the list as “native” plants. Removal must be done with handheld tools to be exempt unless done in conjunction with an approved natural resource management plan; otherwise, removal with other than handheld tools is subject to the Type I review process. After removal, all open soil areas shall be replanted and/or protected from erosion.
5. Removal of debris, as defined in MMC 19.103. For removal of debris from within a protected water feature, removal that involves earth disturbance may only be done during the allowable windows for in-water work as designated by the Oregon Department of Fish and Wildlife.
6. Agricultural practices or uses, excluding buildings and structures, provided that such activities or uses do not result in increased direct stormwater discharges to WQR areas.
7. Maintenance, alteration, expansion, replacement, repair, demolition, and/or change of use of existing legal buildings or structures, provided that the following criteria are met:
 - a. There is no change in the location of or increase in the footprint or size of any building, impervious surface, or outdoor storage area within the WQR area or HCA.
 - b. No other site changes are proposed that could result in increased direct stormwater discharges to the WQR area. If the project will result in increased direct stormwater discharges, the proposal is subject to the Type II review process and the standards for discretionary review established in Subsection 19.322.14.
8. Maintenance, alteration, and repair of existing utilities, access, streets, driveways, and parking improvements, including asphalt overlays, provided there is no increase in impervious area, reduction in landscaped areas or tree cover, or other changes that could result in increased direct stormwater discharges to the WQR area.
9. Emergency procedures or activities undertaken which are necessary to remove or abate hazards to person or property, provided that the timeframe for such remedial or preventative action is too short to allow for compliance with the requirements of Section 19.322. After the emergency, the person or agency undertaking the action shall repair any impacts to the natural resources resulting from the emergency action (e.g., remove

any temporary flood protection such as sandbags, restore hydrologic connections, replant disturbed areas with native vegetation).

10. Maintenance of public and private storm drainage facilities in accordance with a stormwater management plan approved by the City.
11. Activities and improvements in existing public rights-of-way, which are subject to MMC Title 12, the Milwaukie Public Works Standards, and related stormwater management requirements.
12. Removal of trees under any of the following circumstances:
 - a. The tree is a “downed tree” as defined in MMC 19.103, the tree has been downed by natural causes, and no earth disturbance will occur in the process of removing the tree.
 - b. The tree is classified as a “nuisance” or “required eradication” species on the Milwaukie Native Plant List, no more than three such trees will be removed from one property during any 12-month period, and no earth disturbance will occur in the process of removing the tree(s).
 - c. The tree presents an emergency situation with immediate danger to person or property as described in Subsection 19.322.4.A.9. Emergency situations may include, but are not limited to, situations in which a tree or portion of a tree has been compromised and has damaged or is damaging structures or utilities on private or public property; or where a tree or portion of a tree is prohibiting safe passage in the public right-of-way. Examples are trees that have fallen into or against a house or other occupied building, or trees downed across power lines or roadways. This exemption is limited to removal of the tree or portion of the tree as necessary to eliminate the hazard. Any damage or impacts to the designated natural resource area shall be repaired after the emergency has been resolved.
 - d. Removal of the tree is in accordance with an approved natural resource management plan per Subsection 19.322.10.
13. Lot consolidations, as defined in MMC Chapter 17.08.

B. Additional Exemptions within HCAs

In addition to the activities listed in Subsection 19.322.4.A, within an HCA the following activities are exempt from the provisions of Section 19.322, as long as activities within 100 feet of a WQR area meet the requirement to complete a construction management plan as per Subsection 19.322.9:

1. The alteration, expansion, or replacement of existing structures, provided that both of the following standards are met:
 - a. The alteration, expansion, or replacement of a structure shall not intrude more than 500 square feet into the HCA, in addition to the area defined as the building footprint as of *[insert new adoption date]*.
 - b. No new intrusion into the HCA shall be closer to a protected water feature than the pre-existing structure or improvement.
2. Minor encroachments not to exceed 120 square feet of impervious surface, such as accessory buildings, patios, walkways, retaining walls, or other similar features.
3. Temporary and minor clearing or excavation not to exceed 200 square feet for the purpose of site investigations, pits for preparing soil profiles, installing underground

utilities or other infrastructure, or similar activities, provided that such areas are restored to their original condition when the investigation is complete.

4. Low-impact outdoor recreation facilities for public use, including, but not limited to, multi-use paths, access ways, trails, picnic areas, or interpretive and educational displays and overlooks that include benches and outdoor furniture, provided that such a facility meets the following requirements:
 - a. It contains less than 500 square feet of new impervious surface.
 - b. Its trails shall be constructed using non-hazardous, pervious materials, with a maximum width of 5 feet.
5. Facilities that infiltrate stormwater onsite, including the associated piping, may be placed within the HCA so long as the forest canopy and the areas within the driplines of the trees are not disturbed. Such facilities may include, but are not limited to, vegetated swales, rain gardens, vegetated filter strips, and vegetated infiltration basins. Only native vegetation may be planted in these facilities.

19.322.5 Prohibited Activities

The following activities are prohibited within WQR areas and HCAs:

- A. New structures, development, or activity other than those allowed by Section 19.322.
- B. Uncontained areas of hazardous materials, as defined by the Oregon Department of Environmental Quality.
- C. Planting any vegetation listed as a “nuisance” or “required eradication” species on the Milwaukie Native Plant List.
- D. Outside storage of materials, unless such storage began before the [insert new adoption date]; or, unless such storage is approved according to the applicable provisions of Section 19.322.
- E. Application of pesticides with any of the active ingredients listed on the Milwaukie Chemicals of Concern List is prohibited within WQR areas and HCAs. This prohibition shall extend to include any other limitations enacted by federal or state agencies that ban the use of pesticides with certain active ingredients within at least 50 feet of protected water features.

19.322.6 Activities Permitted Under Type I Review

The following activities are allowed within either WQR areas or HCAs, subject to Type I review as per MMC 19.1011.1:

- A. Construction management plans and boundary verifications, as outlined in Subsections 19.322.9 and 19.322.16.
- B. Limited Tree Removal
 1. The Planning Director may approve an application for limited tree removal or significant pruning within WQR areas and HCAs under any of the following circumstances:
 - a. The tree removal is necessary to eliminate a hazardous, non-emergency situation, as determined by the Planning Director. A situation may be deemed hazardous if a tree or portion of a tree has recently undergone a change in health or condition in a manner that may pose a hazard to people, to structures on private property, to

public or private utilities, or to travel on private property or in the public right-of-way. Examples of imminent hazards may include, but are not limited to, trees that are broken, split, cracked, uprooted, or otherwise in danger of collapse. Approval shall be limited to removal of the tree or portion of the tree as necessary to eliminate the hazard.

- b. The tree meets all of the following criteria: (1) it is dead, diseased, or dying; (2) it is not contributing to ecosystem health and function; and (3) it cannot be saved, as determined and documented in a report by a certified arborist.
- c. The proposal would remove 4 or more trees classified on the Milwaukie Native Plant List as “nuisance” or “required eradication” species from a particular location during any 12-month period.
- d. The tree is not exempt as per Subsections 19.322.4.A.12.a or 19.322.4.A.12.b because some earth disturbance is necessary to remove it.
- e. For significant pruning, as defined in MMC 19.103, the tree will survive the proposed significant pruning, as determined and documented in a report by a certified arborist.

This provision does not apply to tree removal proposed in association with development or other activities regulated by Section 19.322, for which other approval criteria and mitigation standards may apply.

- 2. The Planning Director shall require the application to comply with all of the following standards:
 - a. A construction management plan shall be prepared in accordance with Subsection 19.322.9. When earth disturbance is necessary for the approved removal or pruning, all open soil areas that result from the disturbance shall be replanted and/or protected from erosion.
 - b. All pruning and/or tree removal shall be done in accordance with the standards of the International Society of Arboriculture (ISA).
 - c. Any tree that is removed in accordance with Subsection 19.322.6.B shall be replaced with a new tree, at least 1/2 inch in caliper. An exception to this requirement may be granted if the applicant demonstrates that a replacement tree has already been planted in anticipation of tree removal or if the existing site conditions otherwise preclude tree replacement (due to existing dense canopy coverage or other ecological reasons).
 - d. The replacement tree(s) shall be located in the general vicinity of the removed tree(s), somewhere within the designated natural resource area (WQR area or HCA). The replacement tree(s) does not have to be a native species, but, in accordance with Subsection 19.322.5.C, the replacement tree(s) shall not be a species categorized as “nuisance” or “required eradication” on the Milwaukie Native Plant list. The property owner shall ensure that the replacement tree(s) survives at least two years beyond the date of planting.

C. Activities within HCAs in Compliance with Non-Discretionary Standards

Within HCAs, but outside of WQR areas, non-exempt development that is not listed in Subsections 19.322.7 or 19.322.8 and that is in compliance with the non-discretionary standards provided in Subsection 19.322.13.D is subject to Type I review.

D. Natural Resource Management Plans

Natural resource management plans that meet the standards outlined in Subsection 19.322.10.A are subject to Type I review. These are typically plans that have already been approved by a qualified agency.

E. Nuisance Abatement

Measures to remove or abate nuisances or any other violation of state statute, administrative agency rule, or city or county ordinance shall be subject to Type I review of a construction management plan, to be approved by the Planning Director prior to the abatement activity. The person or agency undertaking the action shall repair any impacts to the natural resources resulting from the nuisance or violation (e.g., restore disturbed soils, restore hydrologic connections, replant disturbed areas with native vegetation, etc.), unless subsequent development has been approved.

19.322.7 Activities Permitted Under Type II Review

Unless otherwise exempt or permitted as a Type I activity, the following activities are allowed within either WQR areas or HCAs, subject to Type II review and approval by the Planning Director as per MMC 19.1011.2:

A. Special Uses

If not listed as exempt in Subsection 19.322.4 and not able to meet the non-discretionary standards for HCAs as established in Subsection 19.322.13.D, any special use activity listed below shall be subject to Type II review if the proposal complies with the applicable standards provided in Subsection 19.322.11:

1. Improvement or construction of public or private utility facilities
2. New stormwater pre-treatment facilities
3. Walkways and bike paths
4. Stormwater management plans

If the proposed special use activity is not in compliance with the standards in Subsection 19.322.11, it shall be subject to minor quasi-judicial review and the general discretionary review criteria provided in Subsection 19.322.14.

B. Natural Resource Management Plans

Natural resource management plans that do not meet the Type I review standards provided in Subsection 19.322.10.A but that meet the standards provided in Subsection 19.322.10.B are subject to Type II review. These are typically plans that have been prepared independently of a qualified agency but that are in accordance with particular standards and guidelines related to enhancing natural resources.

C. Partitions that meet the standards provided in Subsection 19.322.12.G.

D. Other Uses and Activities with Minimal Impacts to WQR Areas

The activities listed below are subject to Type II review and the general discretionary review criteria provided in Subsection 19.322.14:

1. Agricultural practices or uses, excluding buildings and structures, that result in increased direct stormwater discharges to WQR areas.

2. Landscaping and maintenance of existing landscaping that would increase impervious area within the WQR area by less than 100 square feet and/or result in increased direct stormwater discharges to the WQR area.
3. Alteration, expansion, and/or replacement of existing legal buildings or structures, provided that the proposed alteration or expansion does not intrude more than 100 square feet into the WQR area, regardless of the ecological quality or condition of the WQR area prior to the proposed activity, and does not encroach closer to the protected water feature than the existing buildings or structures.
4. Alteration and repair of existing utilities, access, streets, driveways, and parking improvements, including asphalt overlays, provided that the proposed improvements do not intrude more than 100 square feet into the WQR area, regardless of the ecological quality or condition of the WQR area prior to the proposed activity, and do not encroach closer to the protected water feature than the existing improvements.

19.322.8 Activities Permitted Under Minor Quasi-Judicial Review

Unless otherwise exempt or permitted as a Type I or Type II activity, the following activities are allowed within either WQR areas or HCAs, subject to minor quasi-judicial review and approval by the Planning Commission under MMC 19.1011.3:

- A. The activities listed below shall be subject to the general discretionary review criteria provided in Subsection 19.322.14:
 1. Any activity allowed in the base zone that is not otherwise exempt or permitted as a Type I or Type II activity.
 2. Within HCAs, development that is not in compliance with the non-discretionary standards provided in Subsection 19.322.13.D.
 3. New roads to provide access to protected water features; necessary ingress and egress across WQR areas; or the widening an existing road.
 4. Improvement of existing public utility facilities that cannot meet the applicable standards of Subsection 19.322.11.
 5. New stormwater pre-treatment facilities that cannot meet the applicable standards of Subsection 19.322.11.
 6. New public or private utility facility construction that cannot meet the applicable standards of Subsection 19.322.11.
 7. Walkways and bike paths that cannot meet the applicable standards of Subsection 19.322.11.
 8. Tree removal in excess of that permitted under Subsections 19.322.4 or 19.322.6.
 9. Landscaping and maintenance of existing landscaping that would increase impervious area by more than 100 square feet.
 10. Maintenance, alteration, expansion, replacement, repair, and/or change of use of existing legal buildings or structures that would disturb more than 100 square feet within the WQR area or would encroach closer to the protected water feature than the existing buildings or structures.
 11. Maintenance, alteration, and repair of existing utilities, access, streets, driveways, and parking improvements, including asphalt overlays, that would disturb more than 100

square feet within the WQR area or would encroach closer to the protected water feature than the existing improvements.

- B. The activities listed below shall be subject to the review criteria for partitions and subdivisions provided in Subsections 19.322.12.H and 19.322.12.I, respectively:
 - 1. The partitioning of land containing a WQR area or HCA that cannot meet the standards provided in Subsection 19.322.12.G.
 - 2. The subdividing of land containing a WQR area or HCA.

19.322.9 Construction Management Plans

- A. Construction management plans are subject to Type I review as per MMC 19.1011.1.
- B. Construction management plans shall provide the following information:
 - 1. Description of work to be done.
 - 2. Scaled site plan showing a demarcation of WQR areas and HCAs and the location of excavation areas for building foundations, utilities, stormwater facilities, etc.
 - 3. Location of site access and egress that construction equipment will use.
 - 4. Equipment and material staging and stockpile areas.
 - 5. Erosion and sediment control measures.
 - 6. Measures to protect trees and other vegetation located within the potentially affected WQR area and/or HCA. A root protection zone shall be established around each tree in the WQR area or HCA that is adjacent to any approved work area. The root protection zone shall extend from the trunk to the outer edge of the tree's canopy, or as close to the outer edge of the canopy as is practicable for the approved project. The perimeter of the root protection zone shall be flagged, fenced, or otherwise marked and shall remain undisturbed. Material storage and construction access is prohibited within the perimeter. The root protection zone shall be maintained until construction is complete.

When required for a property that does not include a designated natural resource area, the construction management plan shall show the protective measures that will be established on the applicant's property.

19.322.10 Natural Resource Management Plans

Natural resource management plans that authorize limited disturbance within the WQR area or HCA may be approved with Type I or Type II review, subject to the following standards:

- A. Plans Eligible for Type I Review

The plan has already been approved by the U.S. Fish and Wildlife Service, Oregon Department of Fish and Wildlife (ODFW), Oregon Division of State Lands (DSL), Oregon Watershed Enhancement Board (OWEB), Metro, Clackamas County Soil and Water Conservation District, or other agency approved by the Planning Director.

- B. Plans Eligible for Type II Review

The plan has been prepared in accordance with particular standards and guidelines promulgated by a natural resource agency, such as OWEB's Oregon Aquatic Habitat Restoration and Enhancement Guide, ODFW's Western Oregon Stream Restoration

Program, or DSL's Hydrogeomorphic (HGM) approach of assessment for wetland and riparian functions.

C. Approval Criteria

Every plan prepared for approval under Section 19.322 must demonstrate that it encourages restoration activities that have any of the following effects:

1. Changes the trend of habitat function from one of a diminishing ability to support salmonids and other organisms to one that supports a complex, self-sustaining system.
2. Corrects or improves conditions caused by past management and/or disturbance events.
3. Maximizes beneficial habitat in the short term where watershed degradation has been extensive and natural processes will need substantial time to restore habitat.
4. Creates beneficial habitat and restores stream function and hydrology to the fullest extent possible within developed areas where no reasonable expectation of returning to natural conditions exists.

D. A construction management plan prepared in accordance with Subsection 19.322.9 is required with each natural resource management plan.

E. Natural resource management plans shall address a minimum activity period of five years and must demonstrate how ongoing maintenance is part of the associated restoration or enhancement activities.

F. Expiration of plans. The approval of a natural resource management plan shall be valid for five years. Approved plans may be renewed through the Type I review process by demonstrating that the original approved plan still meets the criteria provided in Subsection 19.322.10.C.

19.322.11 Special Uses

Unless they are exempt as per Subsection 19.322.4 or do not meet the non-discretionary standards for HCAs provided in 19.322.13.D, the special uses listed in Subsection 19.322.7.A are subject to Type II review if they comply with the applicable standards in Subsection 19.322.11. Otherwise, the special uses listed in Subsection 19.322.7.A are subject to minor quasi-judicial review and the general discretionary review criteria provided in Subsection 19.322.14.

A. General Standards for Special Uses

Except for stormwater management plans, all non-exempt special uses listed in Subsections 19.322.11.B through 19.322.11.E that do not meet the non-discretionary standards for HCAs provided in Subsection 19.322.13.D shall comply with the specific applicable standards in Subsection 19.322.11, as well as with the following general standards:

1. In addition to a construction management plan prepared according to the standards of Subsection 19.322.9, a mitigation plan shall be submitted as per Subsections 19.322.13.D.2 or 19.322.14.C.2 for HCAs, as applicable, or as per Subsection 19.322.13.C for WQR areas. WQR areas and HCAs shall be restored and maintained in accordance with the approved mitigation plan.
2. Existing vegetation outside of approved work areas shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to WQR

areas and HCAs. Trees in WQR areas or HCAs shall not be used as anchors for stabilizing construction equipment.

3. Where existing vegetation has been removed or the original land contours disturbed, the site shall be revegetated and the vegetation shall be established as soon as practicable. Nuisance plants, as identified by the City, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Nuisance plants shall be replaced with native plants by the next growing season.

B. Public or Private Utility Facilities

In addition to the requirements of Subsection 19.322.11.A, the following disturbance area limitations apply to all public and private utilities, private connections to existing or new utility lines, and upgrades that are not exempted by Subsection 19.322.4 or that do not meet the non-discretionary standards for HCAs provided in Subsection 19.322.13.D:

1. The disturbance area for connections to utility facilities shall be no greater than 10 feet wide.
2. The disturbance area for the upgrade of existing utility facilities shall be no greater than 15 feet wide.
3. The disturbance area for new underground utility facilities shall be no greater than 25 feet wide and disturb no more than 200 linear feet of WQR area within any 1,000-linear-foot stretch of WQR area. Such a disturbance area shall be restored with the exception of necessary access points to the utility facility.
4. No fill or excavation is allowed within the ordinary high water mark of a stream, unless a permit is obtained from the U.S. Army Corps of Engineers through the Standard Local Operating Procedures for Endangered Species (SLOPES) process.

C. New Stormwater Pre-treatment Facilities

In addition to the requirements of Subsection 19.322.11.A, new stormwater pre-treatment facilities that are not exempted by Subsection 19.322.4 or that do not meet the non-discretionary standards for HCAs provided in Subsection 19.322.13.D shall not encroach more than 25 feet into the outer boundary of the WQR area adjacent to a primary protected water feature.

D. Walkways and Bike Paths

In addition to the requirements of Subsection 19.322.11.A, walkways and bike paths that are not exempted by Subsection 19.322.4 or that do not meet the non-discretionary standards for HCAs provided in Subsection 19.322.13.D and that are proposed to be constructed or improved with gravel, pavement, pavers, wood or other materials, shall comply with the following standards:

1. Walkways and bike paths within WQR areas or HCAs shall not exceed 10 feet in width.
2. If the proposed walkway or bike path will be located within a WQR area and will be paved, then, for the purposes of evaluating the proposed project, the vegetated corridor shall be widened by the width of the walkway or bike path.
3. The walkway or bike path shall be designed to avoid WQR areas and HCAs and shall be constructed so as to minimize disturbance to existing vegetation and slope stability.
4. The walkway or bike path shall be a minimum of 10 feet from the boundary of the protected water feature.

5. Where practicable, the types, sizes, and intensities of any lights associated with the walkway or bike path shall be placed so that they do not shine directly into any WQR area and/or HCA locations.

E. Stormwater Management Plans

Stormwater management plans that authorize disturbance within the WQR area or HCA may be approved subject to the following standards:

1. Stormwater facilities will be designed to provide an environmentally beneficial hydrological impact on protected water features.
2. Protected water features will be protected from erosion by implementing a stream protection strategy and quantity control strategies.
3. Watershed health will be improved through the use of vegetated facilities to meet pollution reduction, flow control, and infiltration goals and these facilities will be maintained in a manner which ensures a continued benefit to watershed health.
4. Proposed stormwater management facilities will correct or improve conditions caused by past management and/or disturbance events, if any are present.
5. Where no reasonable expectation of returning to natural conditions exists, beneficial habitat, vegetation, and stream function and hydrology will be restored to the fullest extent possible within developed areas.

19.322.12 Land Division and Property Line Adjustments

These standards apply to property line adjustments and all forms of land division defined in MMC Chapter 17.08. These standards apply in addition to the applicable requirements provided in MMC Title 17 Land Division and elsewhere in Title 19 Zoning. Lot consolidations, as defined in MMC Chapter 17.08, are not subject to the provisions of Section 19.322.

A. Boundary Verification

Whether or not an applicant believes the WQNR map is accurate, the applicant shall verify the boundaries of the WQR area and HCA on the property according to Subsection 19.322.16.

B. Construction Management Plans

1. Applications for land division that will require physical site improvements (e.g., grading and/or the construction of structures, streets, or utilities) within, or within 100 feet of, a WQR area or HCA shall include a construction management plan in accordance with Subsection 19.322.9.
2. Applications for land division that do not require grading or constructing structures, streets, or utilities or making other physical improvements to the site are not required to include a construction management plan.

C. Impacts from Site Improvements

Applications for land division that will require physical site improvements (e.g., grading and/or the construction of streets, sidewalks, culverts, bridges, or utilities) within a WQR area or HCA shall comply with the relevant standards for disturbance limitation and mitigation provided in Subsections 19.322.11, 19.322.13, and/or 19.322.14, as applicable.

D. Mitigation for Future Structures or Improvements

Applications proposing a division of land on which future construction may impact a WQR area or HCA must comply with one of the following two standards:

1. Complete the mitigation requirements for any impacts to the WQR area or HCA in accordance with the requirements of Section 19.322 and thereby exempt all subsequent development on lots containing a WQR area and/or HCA from further review.
2. Not complete the mitigation requirements, thus requiring that any subsequent development be subject to review under Section 19.322.

When mitigation is required for new streets created as part of a subdivision, as outlined in Subsection 19.322.12.I, the required mitigation must be completed prior to approval of the final plat for the subdivision, unless the Planning Commission's approval includes a different schedule.

E. Property Line Adjustments

Applications for property line adjustment between two properties, when one or both properties include HCAs, shall address the resulting change in the percentage of HCA coverage on each property and demonstrate compliance with one of the following standards:

1. The proposed property line adjustment will result in no more than a 30-point difference in the percentage of HCA coverage on each property. Such an adjustment shall be subject to the Type I review process.
2. The proposed property line adjustment will not contravene a condition of approval related to HCA distribution from a previously approved land division. Such an adjustment shall be subject to the Type I review process.
3. The proposed property line adjustment cannot meet the standard of E-1, above, but will result in the smallest practicable percentage-point difference in the percentage of HCA coverage on each property. Furthermore, the new boundary configuration will mitigate, to the extent possible, the potential future impacts to the HCA from access and development. Such an adjustment shall be subject to the Type II review process.

F. Replats

For the purpose of compliance with Section 19.322, replats that result in three or fewer lots shall be processed as partitions; replats that result in four or more lots shall be processed as subdivisions.

G. Low-Impact Partitions

Applications for partitions are subject to Type II review if they demonstrate compliance with the following standards:

1. For properties that contain HCAs but no WQR areas, the partition shall achieve either of the following results:
 - a. There shall be no more than a 30-point difference in the percentage of HCA coverage on each of the new parcels. For example, a two-lot partition that produces one parcel that is 55% HCA and the other that is 30% HCA is permissible; whereas a two-lot partition that produces one parcel that is 75% HCA and the other that is 40% HCA is not permissible.
 - b. At least 90% of the original property's HCA is on a separate unbuildable parcel, protected by a conservation restriction.

2. For properties that contain WQR areas, the applicant shall place 100% of the WQR area in a separate unbuildable tract, protected by a conservation restriction.
3. For properties that contain both WQR areas and HCAs, the applicant shall comply with both of the standards listed above in Subsections 19.322.12.G.1 and 19.322.12.G.2.

H. All Other Partitions

Applications for partitions that cannot comply with Subsection 19.322.12.G are subject to minor quasi-judicial review and one of the following two standards:

1. For properties that do not contain any WQR areas but for which it is not practicable to comply with the partition standards in Subsection 19.322.12.G.1, the application shall meet the following standards and is not subject to the requirements of Subsection 19.322.14:
 - a. The partition plan shall result in the smallest practicable percentage point difference in the percentage of HCA coverage on the parcels created by the partition.
 - b. To the extent possible, the parcel configuration shall mitigate the potential future impacts to the HCA from access and development.
2. For properties that contain WQR areas but cannot comply with Subsection 19.322.12.G.2, or that contain both WQR areas and HCAs but cannot comply with Subsection 19.322.12.G.3, the application shall be reviewed against the following standards:
 - a. To the extent possible, the parcel configuration shall mitigate the potential future impacts to WQR areas from access and development.
 - b. An Impact Evaluation and Alternatives Analysis shall be prepared in accordance with the relevant portions of Subsection 19.322.14.A.

I. Subdivisions

Applications for subdivisions are subject to minor quasi-judicial review and one of the following two standards:

1. At least 90% of the property's HCA and 100% of the property's WQR area shall be located in a separate tract. Applications that meet this standard are not subject to the discretionary review requirements of Subsection 19.322.14.
2. If a subdivision cannot comply with the standards in Subsection 19.322.12.I.1, the application shall be reviewed against the following standards:
 - a. All proposed lots shall have adequate buildable area outside of the WQR area and HCA.
 - b. To the extent possible, the lot and access configurations shall mitigate the potential future impacts to the WQR area and HCA from access and development.
 - c. An Impact Evaluation and Alternatives Analysis shall be prepared in accordance with the relevant portions of Subsection 19.322.14.A.

J. Putting the Resource Area in a Separate Tract

Where required by Section 19.322, the new subdivision or partition plat shall delineate and show all WQR areas and HCAs as a separate unbuildable tract(s) according to the following process:

1. Prior to preliminary plat approval, the designated natural resource area (whether WQR area or HCA, or both) shall be shown as a separate tract(s), which shall not be part of any lot or parcel used for construction of any structures.
2. Prior to final plat approval, ownership of the separate natural resource tract(s) shall be identified to distinguish it from lots or parcels intended for sale. Ownership in common or by a homeowners association is strongly discouraged. The tract(s) may be identified as any one of the following:
 - a. Private natural area held by the owner with a restrictive covenant and/or conservation easement.
 - b. For residential subdivisions, private natural area subject to an easement conveying storm and surface water management rights to the City of Milwaukie, Clackamas County Water Environment Services, and/or any other relevant jurisdiction, and preventing the owner of the tract from activities and uses inconsistent with the purposes of Section 19.322.
 - c. Public natural area where the tract has been dedicated to the City of Milwaukie or a private non-profit with the mission of land conservation.
3. The boundaries of all such separate tracts shall be demarcated with stakes, flags, or some similar means so that the boundaries between tracts and adjacent properties are defined in perpetuity. Fences that prevent the unfettered passage of wildlife shall not be installed within any tract.

19.322.13 Development Standards

A. Protection of Habitat During Site Development

During development of any site containing a designated natural resource area, the following standards shall apply:

1. Work areas shall be marked to reduce potential damage to the WQR area and/or HCA.
2. Trees in WQR areas or HCAs shall not be used as anchors for stabilizing construction equipment.
3. Native soils disturbed during development shall be conserved on the property.
4. An erosion and sediment control plan is required and shall be prepared in compliance with requirements set forth in the City's Public Works Standards.
5. Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution, or sedimentation to any WQR area adjacent to the project area.
6. Stormwater flows as a result of proposed development within and to natural drainage courses shall not exceed pre-development flows.
7. Prior to construction, the WQR area and/or HCA that is to remain undeveloped shall be flagged, fenced, or otherwise marked and shall remain undisturbed. Such markings shall be maintained until construction is complete.
8. The construction phase of the development shall be done in such a manner to safeguard the resource portions of the site that have not been approved for development.

9. Where practicable, the types, sizes, and intensities of lights shall be placed so that they do not shine directly into any WQR area and/or HCA locations.
10. All work on the property shall conform to a construction management plan prepared according to Subsection 19.322.9.

B. General Standards for Required Mitigation

Where mitigation is required by Section 19.322 for disturbance to WQR areas and/or HCAs, the following general standards shall apply:

1. Disturbance: Temporary and Permanent

Temporary disturbances are those that occur during the approved development or activity but that will not persist beyond completion of the project. Temporary disturbances include, but are not limited to, accessways for construction equipment; material staging and stockpile areas; and excavation areas for building foundations, utilities, stormwater facilities, etc.

Permanent disturbances are those that remain in place after the approved development or activity is completed. Permanent disturbances include, but are not limited to, buildings, driveways, walkways, and other permanent structures.

Designated natural resource areas that are affected by temporary disturbances shall be restored, and those affected by permanent disturbances shall be mitigated, in accordance with the standards provided in Subsection 19.322.13.C for WQR areas and Subsection 19.322.13.D.2 for HCAs, as applicable.

Landscape plantings are not considered to be disturbances except for those plantings that are part of a non-exempt stormwater facility (e.g., raingarden or bioswale).

Within WQR areas, proposed activities that would disturb existing structures and development such as patios, walkways, lawns and other non-natural landscaped areas are not exempt from the regulations of MMC 19.322 except as provided in Subsection 19.322.4.

2. Required Plants

All trees, shrubs and ground cover must be native plants as identified on the Milwaukee Native Plant List. Applicants are encouraged to choose particular native species that are appropriately suited for the specific conditions of the planting site (e.g., shade, soil type, moisture, topography, etc.).

3. Plant Size

Replacement trees must be at least 1/2 inch in caliper, measured at 6 inches above the ground level for field-grown trees or above the soil line for container-grown trees (the 1/2-inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone, which may be 1-gallon size. Shrubs must be in at least a 1-gallon container or the equivalent in ball and burlap and must be at least 12 inches in height.

4. Plant Spacing

Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on center, or clustered in single species groups of no more than four plants, with each cluster planted between 8 and 10 feet on center. When planting

near existing trees, the dripline of the existing tree shall be the starting point for plant spacing measurements.

5. Plant Diversity

Shrubs must consist of at least two different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.

6. Location of Mitigation Area

a. On-site Mitigation

All mitigation vegetation must be planted on the applicant's site within the designated natural resource area that is disturbed or in an area contiguous to the resource area; provided, however, that if the vegetation is planted outside of the resource then the applicant shall preserve the contiguous planting area by executing a deed restriction such as a restrictive covenant.

b. Off-site Mitigation

For disturbances allowed within WQR areas, off-site mitigation shall not be used to meet the mitigation requirements of Section 19.322.

For disturbance allowed within HCAs, mitigation vegetation may be planted off-site within an area contiguous to the subject-property HCA, provided there is documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site. If the off-site mitigation is not within an HCA, the applicant shall document that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.

7. Invasive Vegetation

Invasive non-native or noxious vegetation, including but not limited to species listed as "nuisance" or "required eradication" plants on the Milwaukie Native Plant List, must be removed within the mitigation area prior to planting.

8. Ground Cover

Bare or open soil areas remaining after the required tree and shrub plantings shall be planted or seeded to 100% surface coverage with grasses or other ground cover species identified as native on the Milwaukie Native Plant List.

9. Tree and Shrub Survival

A minimum of 80% of the trees and shrubs planted shall remain alive on the third anniversary of the date that the mitigation planting is completed.

a. Required Practices

To enhance survival of the mitigation plantings, the following practices are required:

- (1) Mulch new plantings a minimum of 3 inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.
- (2) Remove or control non-native or noxious vegetation throughout the maintenance period.

b. Recommended Practices

To enhance survival of tree replacement and vegetation plantings, the following practices are recommended:

- (1) Plant bare root trees between December 1st and February 28th, and potted plants between October 15th and April 30th.
- (2) Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and the resulting damage to plants.
- (3) Water new plantings 1 inch per week between June 15th and October 15th for the first three years following planting.

c. Monitoring and Reporting

Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die must be replaced in kind. The Planning Director may require a maintenance bond to cover the continued health and survival of all plantings. An annual report on the survival rate of all plantings shall be submitted for three years.

10. Light Impacts

Where practicable, the types, sizes, and intensities of lights shall be placed so that they do not shine directly into any WQR areas or HCA locations.

C. Mitigation Requirements for Disturbance within WQR Areas

The requirements for mitigation vary depending on the existing condition of the WQR area on the project site at the time of application. The existing condition of the WQR area shall be assessed in accordance with the categories established in Table 19.322.13-1 and by considering the entire WQR area on the project site and not solely the specific location where disturbance will occur.

When disturbance within a WQR area is approved according to the standards of Section 19.322, the disturbance shall be mitigated according to the requirements outlined in Table 19.322.13-1 and the standards established in Subsection 19.322.13.B. Allowed disturbance shall be mitigated within the entire WQR area on the project site and not solely in the specific location where disturbance will occur.

Table 19.322.13-1 Restoration and Mitigation Requirements for WQR Areas	
Existing Condition of WQR Area	Requirements Applicable within entire WQR Area on Site where Disturbance is Allowed
Good	
<u>Vegetation and canopy coverage:</u> Combination of trees, shrubs, and groundcover are 80% present. <u>Tree canopy:</u> More than 50% tree canopy coverage in vegetated corridor.	• Submit an inventory of vegetation in areas proposed to be disturbed and a plan for mitigating water quality impacts related to the development, including: sediments, temperature, nutrients, or any other condition that may have caused the protected water feature to be listed on DEQ's 303 (d) list. • Revegetate disturbed and bare areas with native species from the Milwaukie Native Plant List. • Revegetation must occur during the next planting season following site disturbance. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site. • Inventory and remove debris and noxious materials.
Marginal	
<u>Vegetation and canopy coverage:</u> Combination of trees, shrubs, and groundcover are 80% present. <u>Tree canopy:</u> 25 - 50% canopy coverage in vegetated corridor.	• Revegetate disturbed and bare areas with native species from the Milwaukie Native Plant List, using a City-approved plan developed to represent the vegetative composition that would naturally occur on the site. • Revegetation must occur during the next planting season following site disturbance. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site. • Inventory and remove debris and noxious materials.
Degraded	
<u>Vegetation and canopy coverage:</u> Combination of trees, shrubs, and groundcover are less than 80% present. <u>Tree canopy:</u> Less than 25% canopy coverage in vegetated corridor. and/or Greater than 10% surface coverage by any non-native species.	• Remove non-native species. • Revegetate disturbed and bare areas with native species from the Milwaukie Native Plant List, using a City-approved plan developed to represent the vegetative composition that would naturally occur on the site. • Plant and seed to provide 100% surface coverage. • Revegetation must occur during the next planting season following site disturbance. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site. • Inventory and remove debris and noxious materials.

D. Non-Discretionary Standards for HCAs

The following non-discretionary standards may be applied to proposals that are subject to Type I review and located within HCAs only; these standards do not apply to activities proposed within WQR areas:

1. Disturbance Area Limitations in HCAs

To avoid or minimize impacts to HCAs, activities that are not otherwise exempt from the requirements of Section 19.322 and that would disturb an HCA are subject to the following disturbance area limitations, as applicable:

a. Detached and Attached Single-family Residential Uses

The amount of disturbance allowed within an HCA for detached and attached single-family residential uses, including any related public facilities as required by MMC 19.1400, shall be determined by subtracting the area of the lot or parcel outside of the HCA from the maximum disturbance area calculated as described in Figure 19.322.13-1. Such disturbance shall be subject to the mitigation requirements described in Subsection 19.322.13.D.2.

Figure 19.322.13-1 Method for Calculating Allowable Disturbance within an HCA
X = The net amount of disturbance area allowed within the HCA ($X = Y - Z$) Y = The maximum potential disturbance area within the HCA is 50% of the total HCA, up to a maximum of 5000 square feet. Z = The area of the lot or parcel outside the total resource area (WQR and HCA). If (Z) is greater than (Y), then development shall not be permitted within the HCA; otherwise the applicant may disturb up to the net amount of disturbance area allowed (X) within the HCA.
<u>Example 1:</u> 8000-sq-ft lot with 3000 sq ft of HCA and 5000 sq ft outside of HCA/WQR $Y = 1500 \text{ sq ft (50\% of HCA)}$ $Z = 5000 \text{ sq ft outside of HCA/WQR}$ $X = - 3500 \text{ sq ft (1500 sq ft - 5000 sq ft)}$ Conclusion: Z is greater than Y; therefore, development is not permitted within the HCA. <u>Example 2:</u> 8000-sq-ft lot with 6000 sq ft of HCA and 2000 sq ft outside of HCA/WQR $Y = 3000 \text{ sq ft (50\% of HCA)}$ $Z = 2000 \text{ sq ft outside of HCA/WQR}$ $X = 1000 \text{ sq ft (3000 sq ft - 2000 sq ft)}$ Conclusion: Z is not greater than Y; therefore, the applicant may disturb up to the value of X (1000 sq ft) within the HCA).

b. All Other Uses

A net amount of disturbance area of 10% of the HCA on the site is allowed by right, subject to the mitigation requirements described in Subsection 19.322.13.D.2.

c. Temporary and Permanent Disturbances

All disturbances within an HCA that occur during construction or other development activities, whether temporary or permanent disturbances, count equally for the purposes of calculating and tracking the maximum disturbance area allowed for a particular site. Disturbance resulting from any activity deemed exempt as per Subsection 19.322.4 shall not be counted against the amount of disturbance allowed by Subsection 19.322.

d. Disturbance in Excess of that Allowed by Section 19.322

In accordance with Subsection 19.322.8, proposed development that would disturb more HCA than allowed by Subsections 19.322.13.D.1.a and 19.322.13.D.1.b shall be subject to the minor quasi-judicial review process and general discretionary review criteria as outlined in Subsection 19.322.14.C.1.

e. Disturbance Changes HCA Status

As established in Subsection 19.322.16.C.3, when disturbances within HCAs are allowed in accordance with the applicable provisions of Section 19.322, the City shall remove the HCA designation from such disturbance areas on the WQNR map.

In the case of a request to develop within an HCA on a property where a prior development request was subject to the disturbance area limitations of Subsection 19.322.12, the calculation of the new amount of disturbance area allowed within the HCA on the property shall be based on the mapped location of the HCA at the time of the request, notwithstanding any previous calculation of allowed disturbance area.

2. Mitigation Requirements for Disturbance in HCAs

To achieve the goal of reestablishing forested canopy that meets the ecological values and functions described in Subsection 19.322.1, when development intrudes into a HCA, tree replacement and vegetation planting are required according to the following standards, unless the planting is also subject to wetlands mitigation requirements imposed by state and federal law.

These mitigation options apply to tree removal and/or site disturbance in conjunction with development activities that are otherwise permitted by Section 19.322. They do not apply to situations in which tree removal is exempt as per Subsection 19.322.4 or approvable through Type I review.

An applicant must meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the disturbance area is 1 acre or more, the applicant shall comply with Mitigation Option 2.

a. Mitigation Option 1

This mitigation requirement is calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site shall be replaced as shown in Table 19.322.13-2. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Table 19.322.13-2 Tree Replacement	
Size of tree to be removed (inches in diameter)	Number of trees and shrubs to be planted
6 to 12	2 trees and 3 shrubs
13 to 18	3 trees and 6 shrubs
19 to 24	5 trees and 12 shrubs
25 to 30	7 trees and 18 shrubs
over 30	10 trees and 30 shrubs

b. Mitigation Option 2

This mitigation requirement is calculated based on the size of the disturbance area within a HCA. Native trees and shrubs are required to be planted at a rate of 5 trees and 25 shrubs per 500 square feet of disturbance area. This is calculated by dividing the number of square feet of disturbance area by 500, multiplying that result times 5 trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs. For example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals 0.66, and 0.66 times 5 equals 3.3, so 3 trees must be planted, and 0.66 times 25 equals 16.5, so 17 shrubs must be planted. Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

c. Adjustments to HCA Mitigation Requirements

Proposals to vary the number or size of trees and shrubs required as mitigation in Subsection 19.322.13.D.2 shall be subject to the minor quasi-judicial review process and the requirements of Subsection 19.322.14.C.2.

19.322.14 General Discretionary Review

Subsection 19.322.14 establishes a discretionary process by which the City shall analyze the impacts of development on WQR areas and HCAs, including measures to prevent negative impacts and requirements for mitigation and enhancement. The Planning Director may consult with a professional with appropriate expertise to evaluate an application or may rely on appropriate staff expertise to properly evaluate the report's conclusions.

A. Impact Evaluation and Alternatives Analysis

An impact evaluation and alternatives analysis is required to determine compliance with the approval criteria for general discretionary review and to evaluate development alternatives for a particular property. A report presenting this evaluation and analysis must be prepared and signed by a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist.

The alternatives must be evaluated on the basis of their impact on WQR areas and HCAs, the ecological functions provided by the resource on the property, and off-site impacts within the subwatershed (6th Field Hydrologic Unit Code) where the property is located. The evaluation and analysis shall include the following:

1. Identification of the ecological functions of riparian habitat found on the property as described in Subsection 19.322.1.C.2.

2. An inventory of vegetation, including the percentage of ground and canopy coverage materials within the WQR area, sufficient to categorize the existing condition of the WQR area as outlined in Table 19.322.13-1.
3. An assessment of the water quality impacts related to the development, including sediments, temperature and nutrients, sediment control, and temperature control, or addressing any other condition with the potential to cause the protected water feature to be listed on DEQ's 303(d) list.
4. An alternatives analysis demonstrating that:
 - a. No practicable alternatives to the requested development exist that will not disturb the WQR area or HCA.
 - b. Development in the WQR area and/or HCA has been limited to the area necessary to allow for the proposed use.
 - c. If disturbed, the WQR area can be restored to an equal or better condition in accordance with Table 19.322.13-1 and the HCA can be restored consistent with the mitigation requirements of Subsection 19.322.13.D.2.
 - d. Road crossings will be minimized as much as possible.

The analysis shall provide an explanation of the rationale behind choosing the alternative selected, including how adverse impacts to natural resource areas will be avoided and/or minimized.

5. For applications proposing an alteration, addition, rehabilitation, or replacement of existing structures located within the WQR area, the applicant shall do the following:
 - a. Demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the WQR area than the one proposed. If no such reasonably practicable alternative design or method of development exists, the project shall be conditioned to limit its disturbance and impact on the WQR area to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement, or rehabilitation.
 - b. Provide mitigation to ensure that impacts to the functions and values of the WQR area will be mitigated or restored to the extent practicable.
6. A mitigation plan for the designated natural resource area that contains the following information:
 - a. A description of adverse impacts that will be caused as a result of development.
 - b. An explanation of how adverse impacts to designated natural resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 19.322.13-1 for WQR areas and Subsection 19.322.13.D.2 for HCAs.
 - c. A description of how the following standards will be achieved:
 - (1) Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.
 - (2) Where practicable, the types, sizes, and intensities of lights shall be placed so that they do not shine directly into the WQR area and/or HCA locations.
 - (3) Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, except where mitigation is approved, so as to provide a transition between the proposed

development and the natural resource area and to provide opportunity for food, water, and cover for animals located within the WQR area.

- d. A map showing where the specific mitigation activities will occur. Off-site mitigation related to WQR areas shall not be used to meet the mitigation requirements of Section 19.322.
- e. An implementation schedule, including a timeline for construction, mitigation, mitigation maintenance, monitoring, and reporting, as well as a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the allowable windows for in-water work as designated by the Oregon Department of Fish and Wildlife.

B. Approval Criteria

Applications subject to the discretionary review process shall demonstrate how the proposed activity complies with the following criteria:

1. Avoid

The proposed activity avoids the intrusion of development into the WQR area and/or HCA to the extent practicable. The proposed activity must have less detrimental impact to the designated natural resource area than other practicable alternatives, including significantly different practicable alternatives that propose less development within the resource area.

2. Minimize

If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the designated natural resource area, then the proposed activity within the resource area shall minimize detrimental impacts to the extent practicable.

- a. The proposed activity must minimize detrimental impacts to ecological functions and loss of habitat consistent with uses allowed by right under the base zone, to the extent practicable.
- b. To the extent practicable within the designated natural resource area, the proposed activity shall be designed, located, and constructed to:
 - (1) Minimize grading, removal of native vegetation, and disturbance and removal of native soils by using the approaches described in Subsection 19.322.13.A, reducing building footprints, and using minimal excavation foundation systems (e.g., pier, post, or piling foundation).
 - (2) Minimize adverse hydrological impacts on water resources.
 - (3) Minimize impacts on wildlife corridors and fish passage.
 - (4) Consider using other techniques to further minimize the impacts of development in the resource area, such as using native plants throughout the site (not just in the resource area), locating landscaping required by other parts of MMC Title 19 Zoning adjacent to the resource area, reduce light spill-off into the resource area from development, preserving and maintaining existing trees and tree canopy coverage, and/or planting trees where appropriate to maximize future tree canopy coverage.

3. Mitigate

If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the designated natural resource area, then the proposed activity must mitigate for adverse impacts to the resource area. All proposed mitigation plans must meet the following standards:

- a. The mitigation plan shall demonstrate that it compensates for detrimental impacts to ecological functions provided by resource areas, after taking into consideration the applicant's efforts to minimize such detrimental impacts.
- b. Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation for disturbance of WQR areas shall not be approved. Off-site mitigation for disturbance of HCAs shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant has documented that they can carry out and ensure the success of the off-site mitigation as outlined in Subsection 19.322.13.B.5.

In addition, if the off-site mitigation area is not within the same subwatershed (6th Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall demonstrate that it is not practicable to complete the mitigation within the same subwatershed and that, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the subwatershed.

- c. All re-vegetation plantings shall be with native plants listed on the Milwaukie Native Plant List.
 - d. All in-stream work in fish-bearing streams shall be done in accordance with the allowable windows for in-water work as designated by the Oregon Department of Fish and Wildlife.
 - e. A mitigation maintenance plan shall be included and shall be sufficient to ensure the success of the planting, and compliance with the plan shall be a condition of development approval.
4. Municipal Water Utility Facilities Standards

In addition to all other applicable criteria of Subsection 19.322.14.B and if not already exempted by Subsection 19.322.4, municipal potable water, stormwater, and wastewater utility facilities (which may include, but are not limited to, water treatment plants, wastewater treatment plants, raw water intakes, pump stations, transmission mains, conduits or service lines, terminal storage reservoirs, and outfall devices) may be built, expanded, repaired, maintained, reconfigured, rehabilitated, replaced or upsized in accordance with the following criteria:

- a. Such projects shall not have to comply with the requirements of Subsection 19.322.14.B.1 to avoid the resource area, provided that, where practicable, the project does not encroach closer to a protected water feature than existing operations and development; or, for new projects where there are no existing operations or development, that the project does not encroach closer to a protected water feature than practicable.
- b. Best management practices will be employed that accomplish all of the following:
 - (1) Account for watershed assessment information in project design.
 - (2) Minimize the trench area and tree removal within the resource area.

- (3) Utilize and maintain erosion controls until other site stabilization measures are established, post-construction.
- (4) Replant immediately after backfilling, or as soon as effective.
- (5) Preserve wetland soils and retain soil profiles.
- (6) Minimize compactions and the duration of the work within the resource area.
- (7) Complete in-water construction during appropriate seasons, or as approved within requisite federal or state permits.
- (8) Monitor water quality during the construction phases, if applicable.
- (9) Implement a full inspection and monitoring program during and after project completion, if applicable.

C. Disturbance of HCAs: Limitations and Mitigation

1. Discretionary Review to Approve Additional Disturbance within an HCA

An applicant seeking discretionary approval to disturb more of an HCA than is allowed by Subsection 19.322.13.D.1 shall submit an Impact Evaluation and Alternatives Analysis as outlined in Subsection 19.322.14.A and shall be subject to the approval criteria provided in Subsection 19.322.14.B.

2. Discretionary Review to Approve Mitigation that Varies the Number and Size of Trees and Shrubs within an HCA

An applicant seeking discretionary approval to proportionally vary the number and size of trees and shrubs required to be planted under Subsection 19.322.13.D.2 (for example, to plant fewer larger trees and shrubs or to plant more smaller trees and shrubs) but who will comply with all other applicable provisions of Subsection 19.322.13 shall be subject to the following process:

a. The applicant shall submit the following information:

- (1) A calculation of the number of trees and shrubs the applicant would be required to plant under Subsection 19.322.13.D.2.
- (2) The numbers and sizes of trees and shrubs that the applicant proposes to plant.
- (3) An explanation of why the numbers and sizes of trees and shrubs that the applicant proposes to plant will achieve, at the end of the third year after initial planting, comparable or better mitigation results as the results that would be achieved if the applicant complied with all of the requirements of Subsection 19.322.13.D.2. Such explanation shall be prepared and signed by a knowledgeable and qualified natural resources professional or a certified landscape architect and shall include discussion of site preparation including soil additives and removal of invasive and noxious vegetation, plant diversity, plant spacing, planting season, and immediate post-planting care including mulching, irrigation, wildlife protection, and weed control.
- (4) A mitigation site-monitoring and -reporting plan.

b. Approval of the request shall be based on consideration of the following:

- (1) Whether the proposed planting will achieve, at the end of the third year after initial planting, comparable or better mitigation results as the results that would

be achieved if the applicant complied with all of the requirements of Subsection 19.322.13.D.2.

- (2) Whether the proposed mitigation adequately addresses the plant diversity, plant survival, and monitoring practices established in Subsection 19.322.13.B.

19.322.15 Adjustments and Variances

To encourage applicants to avoid or minimize impacts to WQR areas and/or HCAs, several types of adjustments and variances are available for use on sites subject to Section 19.322. These include adjustments to specific base zone and lot design standards, discretionary variances, and allowances for residential cluster development.

A. Adjustments

The following adjustments are allowed by right as part of any Type I, Type II, or minor quasi-judicial application:

1. Adjustments to Base Zone Standards

a. Yard setback standards (general)

Yard setback standards may be adjusted by up to 10%. This allowance applies only to the yard requirements established in base zones and does not apply to the additional yard requirements for conditional uses or community service uses, nor to any of the yard exceptions established in MMC 19.401.2.

b. Rear yard setback (limited)

For residential development, if the subject property is adjacent to a separate tract that was established according to the standards of Subsection 19.322.12.J and the tract is adjacent to the rear yard of the subject property, the minimum rear yard requirement may be reduced to 10 feet.

2. Adjustments to Lot Design Standards

When property boundaries are changed as provided in MMC Title 17 Land Division, an applicant may utilize the following adjustments to avoid or minimize impacts to a WQR area or HCA:

- a. The minimum base-zone standards for lot width and lot depth may be reduced by up to 10%.
- b. The minimum lot frontage required on a public street may be reduced by up to 10%.

The adjustments provided in Subsection 19.322.15.A shall not be used to avoid the requirement to submit a construction management plan if deemed applicable as per Subsection 19.322.3.

B. Variances

1. Requests to vary any standards beyond the adjustments allowed in Subsections 19.322.15.A or 19.322.15.B shall be subject to the review process and approval criteria for variances as established in MMC 19.700.
2. In granting any variance request related to Section 19.322, the Planning Commission may impose such conditions as are deemed necessary to minimize adverse impacts

that may result from granting relief from provisions of Section 19.322. Examples of such conditions include, but are not limited to, maintaining a minimum width of the vegetated corridor alongside a primary protected water feature and limiting the amount of WQR area for which the adjacent vegetated corridor width can be reduced.

C. Residential Cluster Development

For residential proposals, development may be clustered, enabling the allowable density to be transferred on site so that land can be developed at allowed densities while avoiding or minimizing impacts to WQR areas or HCAs. A residential cluster development may be permitted in any residential or mixed-use zoning district, subject to minor quasi-judicial review and approval by the Planning Commission.

1. Calculation of Permitted Number of Dwelling Units

- a. The maximum number of dwelling units proposed for a residential cluster development shall not exceed the number of dwelling units otherwise permitted for the residential zoning district in which the parcel is located. The number of units allowed on a parent lot may be transferred to one or more newly created lots or parcels on the site. The cumulative density for all lots or parcels shall not exceed the density allowed for the parent lot.
- b. The number of permitted dwelling units on a site shall be calculated in the following manner:
 - (1) Measure the gross area of the proposed cluster development site in acres and tenths of an acre.
 - (2) From the gross area, subtract the area of public streets, other publicly dedicated improvements, and common open space (whether or not it is conveyed pursuant to Subsection 19.322.15.C.2.c), measured in acres and tenths of an acre. The remainder shall be the net buildable area.
 - (3) Convert the net buildable area from acres to square feet, using the equivalency of 43,560 sq ft = 1 acre.
 - (4) Divide the net buildable area by the smallest minimum lot size (in square feet) per unit for a dwelling unit permitted in the zoning district. This figure shall be rounded to the nearest lower number to establish the maximum number of dwelling units permitted in the cluster development.

2. Development Standards

- a. All principal and accessory uses authorized in the underlying zoning district(s) shall be allowed in the cluster development. In addition, single-family attached dwellings, multi-family dwellings, and town houses may be permitted for a cluster development located in a residential zoning district that does not otherwise allow attached dwelling units.
- b. Maximum lot coverage, building height, and off-street parking requirements for the applicable zoning district shall apply to the cluster development. Maximum lot coverage, floor area ratios, and off-street parking requirements shall be applied to the entire site rather than to any individual lot.
- c. The following provisions shall apply to any residential cluster development, regardless of the general requirements of the applicable residential zoning district:
 - (1) Minimum lot width and lot depth standards shall not apply.

- (2) A minimum separation of 10 feet shall be provided between all principal buildings and structures.
- (3) A minimum yard or common open space shall be provided, with a minimum depth of 25 feet, as measured from all public streets and from the side and rear lot lines of the entire cluster development.
- (4) Each lot shall provide at least 12 feet of frontage on a public street.
- (5) More than one principal building or structure may be placed on a lot.
- (6) Not less than 25 percent of the site shall be conveyed as common open space.
- (7) No less than 50 percent of the designated natural resources on the site shall be included in calculating the common open space.

3. Site Plan Requirements

The preliminary and final site plans for a residential cluster development shall include the following information, in addition to the items listed on the City's site plan checklist:

- a. The maximum number and type of dwelling units proposed.
- b. The areas of the site on which the dwelling units are to be constructed or are currently located and their size. This may take the form of the footprint of the dwelling unit or a building envelope showing the general area in which the dwelling unit is to be located.
- c. The calculations for the permitted number of dwelling units, derived pursuant to Subsection 19.322.15.C.2.
- d. The areas of the site on which other principal and accessory uses are proposed to be located and their size.
- e. The areas of the site designated for common open space and their size.

4. Approval Criteria

Proposals for residential cluster development shall demonstrate compliance with the following criteria:

- a. The site plan satisfies the requirements of Subsections 19.322.15.C.1 and C.2.
- b. Buildings and structures are adequately grouped so at least 25 percent of the total area of the site is set aside as common open space. To the greatest degree practicable, common open space shall be designated as a single tract and not divided into unconnected small parcels located in various parts of the development. Common open space shall be conveyed as allowed by Subsection 19.322.12.J.
- c. Individual lots, buildings, structures, streets, and parking areas are situated to minimize the alteration of natural features, natural vegetation, and topography.
- d. Impacts to WQR areas and HCAs are avoided or minimized to the greatest degree practicable.
- e. The cluster development advances the purposes of the Water Quality and Natural Resource overlay zone, as established in Subsection 19.322.1.

In addition, the Planning Commission may apply such conditions or stipulations to its approval as may be required to maintain harmony with neighboring uses and to promote the objectives and purposes of the comprehensive plan and the zoning and land division ordinances.

19.322.16 Boundary Verification and Map Administration

For purposes of determining whether the standards of Section 19.322 apply to a proposed activity at any given location, the Milwaukie Water Quality and Natural Resource map (WQNR map) is assumed to be accurate. An applicant's agreement with the accuracy of the WQNR map does not constitute or require a land use decision.

A. Boundary Verification

An applicant may challenge the accuracy of the WQNR map through the boundary verification process, which is subject to Type I review as per MMC 19.1011.1.

1. Verifying WQR Areas

WQR areas are defined according to the parameters established in Table 19.322.16-1. To verify the boundary of a WQR area shown on the WQNR map, the applicant shall submit the following information, depending on the type of water feature in question:

a. Drainages

In the case of drainages, including rivers, streams, springs, and natural lakes, the applicant shall submit a hydrology report prepared by a professional engineer demonstrating whether or not the drainage meets the definition of a protected water feature. If the drainage is demonstrated to be a protected water feature, the applicant shall provide a topographic map of the site with contour intervals of 5 feet or less that shows the specific location of the drainage on the subject property.

b. Wetlands

In the case of wetlands, the applicant shall submit a wetland delineation report prepared by a professional wetland specialist, following the wetlands delineation process established by the Department of State Lands (DSL). The delineation report will be accepted only after approval by DSL. If the wetland is demonstrated to be a primary protected water feature, the applicant shall provide a topographic map of the site with contour intervals of 5 feet or less that shows the specific location of the wetland on the subject property.

When Type II or minor quasi-judicial applications involve wetlands, the applicant is required to follow this boundary verification process to identify the specific location of wetlands on the subject property.

Table 19.322.16-1 Vegetated Corridor Measurement by Protected Water Feature Type			
Protected Water Feature Type	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Protected Water Feature	Width of Vegetated Corridor²
Primary Protected Water Features ¹	< 25%	- Bankful stage (top of bank) or 2-year recurrence interval flood elevation - Delineated edge of Title 3 wetland	50 ft
Primary Protected Water Features ¹	> 25% for 150 ft or more ³	- Bankful stage or 2-year flood elevation - Delineated edge of Title 3 wetland	200 ft
Primary Protected Water Features ¹	> 25% for less than 150 ft ³	- Bankful stage or 2-year flood elevation - Delineated edge of Title 3 wetland	Distance from starting point of measurement to top of ravine (break in > 25% slope) ⁴ , plus 50 ft. ⁵
Secondary Protected Water Features ⁶	< 25%	Bankful stage or 2-year flood elevation	15 ft
Secondary Protected Water Features ⁶	> 25% ³	Bankful stage or 2-year flood elevation	50 ft
¹ Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, and natural lakes and springs. See MMC 19.103 for the full definition. ² Vegetated corridor width shall be applied to the outer boundaries of water features, such as the edge of a wetland and both banks of a watercourse. ³ Vegetated corridors in excess of 50 feet for primary protected features, or in excess of 15 feet for secondary protected features, apply on steep slopes only in the uphill direction from the protected water feature. ⁴ Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the > 25% slope. ⁵ A maximum reduction of 25 feet may be permitted in the width of the vegetated corridor beyond the slope break if a geotechnical report demonstrates that the slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-foot increments away from the water feature until the slope is less than 25% (top of ravine). ⁶ Secondary Protected Water Features include intermittent streams draining 50 to 100 acres. See MMC 19.103 for the full definition.			

2. Verifying HCAs

a. Options for HCA Verification

To verify the boundary of an HCA when an applicant believes the WQNR map is inaccurate, the applicant may propose corrections according to one of the following procedures, as applicable:

(1) Simple Incongruities

In some cases, the vegetative cover data shown on the WQNR map might not align with the location of existing legally established development or existing established tree cover. An applicant who believes that the WQNR map is

inaccurate based on such an obvious misalignment shall submit the following information regarding the property:

- (a) A detailed property description and site plan of the property that includes all existing conditions information listed on the site plan checklist provided by the City.
- (b) A copy of the applicable WQNR map section.
- (c) The latest available aerial photograph of the property, with lot lines shown, at a scale of at least one map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of one map inch equal to 100 feet for larger lots.
- (d) A documented demonstration of the misalignment between the WQNR map and the property's tax lot boundary lines and/or the location of existing legally established development.
- (e) Any other factual information that the applicant wishes to provide to support boundary verification.

(2) Legal Development Prior to Adoption Date

If a property was legally developed between the summer of 2002 (when the aerial photo used to determine the regional habitat inventory was taken) and *[insert new adoption date]*, the applicant shall submit the following information regarding the property:

- (a) The information described in Subsection 19.322.16.A.2.a(1).
- (b) A summer 2002 aerial photograph of the property, with lot lines shown, at a scale of at least one map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of one map inch equal to 100 feet for larger lots.
- (c) Any approved building permits or other development plans and drawings related to the development of the property that took place between summer 2002 and *[insert new adoption date]*.
- (d) A clear explanation and documentation, such as supporting maps or drawings or a more recent aerial photograph, indicating the new development that has occurred and where previously identified habitat no longer exists because it is now part of a developed area.

(3) Other Corrections

An applicant who believes that an HCA shown on the WQNR map should be corrected for a reason other than those described in Subsections 19.322.16.A.2.a(1) or 2.a(2) may propose a detailed verification. The applicant shall submit a report prepared and signed by either a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist; or by a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, stormwater facilities, or other similar facilities. The report shall include:

- (a) A description of the qualifications and experience of all persons that contributed to the report and, for each person that contributed, a

description of the elements of the analysis to which the person contributed.

- (b) The information described in Subsection 19.322.16.A.2.a(1).
- (c) The information described in Subsection 19.322.16.A.2.a(2), if the applicant believes such information is relevant to the verification of habitat location on the subject lot or parcel.
- (d) Additional aerial photographs if the applicant believes they provide better information regarding the property, including documentation of the date and process used to take the photos and an expert's interpretation of the additional information they provide.
- (e) A map showing the topography of the property shown by two-foot vertical contours in areas of slopes less than 15%, and at 5-foot vertical contours of slopes 15% or greater.
- (f) Any additional information necessary to address each of the detailed verification criteria provided in Subsection 19.322.16.A.3, a description of where any HCAs are located on the property based on the application of the detailed verification criteria, and factual documentation to support the analysis.

3. Detailed Verification Criteria for Substantial Changes to HCAs

A boundary verification request submitted under Subsection 19.322.16.A.2.a(3) shall be evaluated according to the following three-step process:

a. Step 1 - Verify the Boundaries of Inventoried Riparian Habitat

Locating habitat and determining the riparian habitat class of the designated natural resource area is a four-step process:

- (1) Locate the water feature that is the basis for identifying riparian habitat.
 - (a) Locate the top of bank of all streams, rivers, and open water within 200 feet of the property.
 - (b) Locate all flood areas within 100 feet of the property.
 - (c) Locate all wetlands within 150 feet of the property based on the WQNR map. Identified wetlands shall be further delineated consistent with methods currently accepted by DSL and the Corps.
- (2) Identify the vegetative cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas.
 - (a) Vegetative cover status shall be as identified on the latest Metro Vegetative Cover Map (available from the City and/or the Metro Data Resource Center).
 - (b) The vegetative cover status of a property may be adjusted only if: (1) the property was legally developed prior to the time Section 19.322 was adopted (see Subsection 19.322.16.A.2.a(2)), or (2) an error was made at the time the vegetative cover status was determined. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover

on their property, using the aerial photographs on which the latest Metro Vegetative Cover Map is based and the definitions of the different vegetative cover types identified in Table 19.322.16-2.

- (3) Determine whether the degree that the land slopes upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25% using the methodology outlined in Table 19.322.16-1.
- (4) Identify the riparian habitat classes applicable to all areas on the property using Table 19.322.16-2 and the data identified in Subsections 19.322.16.A.3.a(1) through 3.a(3).

Table 19.322.16-2 Method for Determining Classification of Riparian Areas			
Distance from Protected Water Feature	Development/Vegetation Status ¹		
	Low structure vegetation or open soils ²	Woody vegetation (shrub and scattered forest canopy) ³	Forest Canopy (closed to open forest canopy) ⁴
(a) Surface Streams			
0 to 50 ft	Class I ⁵	Class I	Class I
50 to 100 ft	Class II ⁶	Class I	Class I
100 to 150 ft	Class II ⁶ if slope>25%	Class II ⁶ if slope>25%	Class II ⁶
150 to 200 ft	Class II ⁶ if slope>25%	Class II ⁶ if slope>25%	Class II ⁶ if slope>25%
(b) Wetlands (Wetland feature itself is a Class I Riparian Area)			
0 to 100 ft	Class II ⁶	Class I	Class I
100 to 150 ft			Class II ⁵
(c) Flood Areas			
Within 300 ft of river or surface stream	Class I	Class I	Class I
More than 300 ft from river or surface stream	Class II ⁶	Class II ⁶	Class I
0 to 100 ft from edge of flood area		Class II ^{6, 7}	Class II ⁶
¹ The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged. ² "Low structure vegetation or open soils" means areas that are part of a contiguous area one acre or larger of grass, meadow, crop-lands, or areas of open soils located within 300 feet of a surface stream. Low structure vegetation areas may include areas of shrub vegetation less than one acre in size if they are contiguous with areas of grass, meadow, crop-lands, orchards, Christmas tree farms, holly farms, or areas of open soils located within 300 feet of a surface stream and together form an area of one acre in size or larger. ³ "Woody vegetation" means areas that are part of a contiguous area one acre or larger of shrub or open or scattered forest canopy (less than 60% crown closure) located within 300 feet of a surface stream. ⁴ "Forest canopy" means areas that are part of a contiguous grove of trees of one acre or larger in area with approximately 60% or greater crown closure, irrespective of whether the entire grove is within 200 feet of the relevant water feature. ⁵ Except that areas within 50 feet of surface streams shall be Class II riparian areas if their vegetation status is "Low structure vegetation or open soils," and if they are high gradient streams. High gradient streams are identified on the Metro Vegetative Cover Map. If a property owner believes the gradient of a stream was incorrectly identified, then the property owner may demonstrate the correct classification by identifying the channel type using the methodology described in the Oregon Watershed Assessment Manual, published by the Oregon Watershed Enhancement Board, and appended to the Metro's Riparian Corridor and Wildlife Habitat Inventories Report, Attachment 1 to Exhibit F to Metro Ordinance No. 05-1077C. ⁶ Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the			

provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro's Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

⁷ Only if within 300 feet of a river or surface stream.

b. Step 2 - Determine the Urban Development Value of the Property

The urban development value of property designated as regionally significant habitat is depicted on the Metro Habitat Urban Development Value Map (available from the Metro Data Resource Center).

- (1) A property's urban development value designation shall be adjusted upward if the Metro 2040 Design Type designation for the property lot or parcel has changed from a category designated as a lower urban development value category to one designated as a higher urban development value category. 2040 Design Type designations are identified on the Metro 2040 Applied Concept Map (available from the Metro Data Resource Center).
- (2) Properties in areas designated on the 2040 Applied Concept Map as the Central City, Regional Centers, Town Centers, and Regionally Significant Industrial Areas are considered to be of high urban development value; properties in areas designated as Main Streets, Station Communities, Other Industrial Areas, and Employment Centers are of medium urban development value; and properties in areas designated as Inner and Outer Neighborhoods and Corridors are of low urban development value.
- (3) As designated in Title 13 of Metro's Urban Growth Management Functional Plan, properties owned by a regionally significant educational or medical facility are designated as high urban development value.

c. Step 3 - Cross-Reference Habitat Class with Urban Development Value

City verification of the locations of HCAs shall be consistent with Table 19.322.16-3.

Table 19.322.16-3 Method for Identifying Habitat Conservation Areas (HCAs)				
Fish & wildlife habitat classification	High Urban development value¹	Medium Urban development value²	Low Urban development value³	Other areas: Parks and Open Spaces, no design types outside UGB
Class I Riparian	HCA	HCA	HCA	HCA
Class II Riparian	HCA	HCA	HCA	HCA
Class A Upland Wildlife	No HCA	No HCA	No HCA	No HCA / HCA ⁴
Class B Upland Wildlife	No HCA	No HCA	No HCA	No HCA / HCA ⁴

NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040 Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an HCA adjustment.

- ¹ Primary 2040 design type: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas
- ² Secondary 2040 design type: Main Streets, Station Communities, Other Industrial areas, and Employment Centers
- ³ Tertiary 2040 design type: Inner and outer neighborhoods, Corridors
- ⁴ All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered HCA.

B. Map Administration

When boundary verifications conducted in accordance with the standards of Subsections 19.322.16 demonstrate errors in the WQR areas or HCAs shown on the WQNR map, the City shall update the WQNR map to incorporate the corrected information. Changes to the WQNR map do not require changes to the City's zoning map or comprehensive plan.

1. Corrections to WQR Areas

Protected water features, including their associated vegetated corridors or buffers, that are perceived to be improperly mapped on the WQNR map or missing from the map altogether may be corrected or added by Type II review, subject to the following applicable procedures and criteria:

- a. The applicant shall submit the appropriate technical report:
 - (1) In the case of wetlands, the applicant shall submit a wetland delineation report prepared by a professional wetland scientist in accordance with the 1996 Oregon Freshwater Wetland Assessment Methodology, demonstrating the location of any wetlands on the site.
 - (2) In the case of drainages, the applicant shall submit a hydrology report prepared by a professional engineer, demonstrating whether the drainage meets the definition of a protected water feature.
- b. The Planning Director shall confer with DSL and Metro to confirm delineation and hydrology reports as may be needed prior to issuing a notice of decision on a requested map deletion.
- c. The City shall amend the WQNR map if the wetland or hydrology report demonstrates any of the following:
 - (1) An error in the original mapping.
 - (2) That the boundaries of the WQR area have changed since adoption of the WQNR map.
 - (3) That a primary protected water feature no longer exists because the area has been legally filled, culverted, or developed prior to the adoption of Section 19.322.
- d. In addition, for modifications of protected water features shown on the WQNR map, the applicant shall demonstrate that the modification will offer the same or better protection of the protected water feature, WQR area, and flood management area by doing all of the following:
 - (1) Preserving a vegetated corridor that will separate the protected water feature from proposed development.

- (2) Preserving existing vegetated cover or enhancing the WQR area sufficient to assist in maintaining or reducing water temperatures in the adjacent protected water feature.
- (3) Enhancing the WQR area sufficient to minimize erosion, nutrient and pollutant loading into the adjacent protected water feature.
- (4) Protecting the vegetated corridor sufficient to provide filtration, infiltration, and natural water purification for the adjacent protected water feature.
- (5) Stabilizing slopes adjacent to the protected water feature.

2. Corrections to HCAs

Following approval of an application for boundary verification according to the provisions of Subsection 19.322.16.A.2, the City shall modify the WQNR map to correct errors to mapped HCAs. The City shall issue an official boundary verification letter to document the correction.

3. Mapping Implications of Allowed Disturbances

a. WQR Areas

Permanent disturbances within a WQR area, whether they occurred prior to the adoption of the City's zoning ordinance or are allowed according to the standards of MMC 19.322, do not affect how the related WQR areas are shown on the WQNR map.

b. HCAs

When disturbances are allowed within HCAs in accordance with the applicable standards of Section 19.322, the City shall update the WQNR map to show that the disturbed area is no longer considered HCA.

CHAPTER 19.100 INTRODUCTORY PROVISIONS

Section 19.103 Definitions

Definitions to be amended (related to natural resources):

“Bankful stage” means the stage or elevation at which water overflows the natural banks of a stream or other waters of the state and begins to inundate upland areas. In the absence of physical evidence, the two-year ~~recurrent~~ recurrence interval flood elevation may be used to approximate the bankful stage. Also referred to as “top of bank.”

“Direct stormwater discharge” means stormwater that does not ~~have a chance to sufficiently infiltrate into the ground~~ before reaching a designated natural resource area.

“Downed Tree” means any tree that is no longer standing upright as the result of natural or human forces and that has come to rest, whether leaning or completely down, within a protected water feature, a WQR area, or an HCA.

“Habitat Conservation Area (HCA)” means significant Goal 5 wetlands, riparian areas, and fish and wildlife habitat, as established in MMC Section 19.322.

“Native vegetation or native plant” means any vegetation native to the Portland metropolitan area or listed on the Milwaukie Native Plant List, provided that it is not listed as a nuisance plant or a required eradication plant on the Milwaukie Native Plant List.

“Net acre” means an area measuring 43,560 square feet excluding the following: rights-of-way; floodplains; protected water features and their associated vegetated corridors as established in MMC Section 19.322; natural resource areas protected under Statewide Planning Goal 5; slopes in excess of 25%; and publicly owned land designated for park, open space, and resource protection. These excluded areas do not include lands for which the zoning code provides a density bonus or other mechanism that allows the transfer of the allowable density or use to another area or to development elsewhere on the same site.

“Protected water features”:

“Primary protected water features” means and includes any of the following:

- a. Title 3 wetlands, which means wetlands of metropolitan concern as shown on the Metro Water Quality and Flood Management Area Map and other wetlands added to City-adopted Water Quality and Flood Management Area maps consistent with the criteria in Title 3 of Metro’s Urban Growth Management Functional Plan, Section 3.07.340(E)(3). Title 3 wetlands do not include artificially constructed and managed stormwater and water quality treatment facilities.
- b. Rivers, streams and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow).
- c. Streams carrying year-round flow.
- d. Springs which feed streams and wetlands and have year-round flow.
- e. Natural lakes.

“Secondary protected water features” means and includes intermittent streams and seeps downstream of the point at which 50 acres are drained and upstream of the point at which 100 acres are drained to that water feature.

“Significant Pruning” means removal of more than 20% of a tree’s canopy, or injury or cutting of over 10% of the root system, during any 12-month period.

“Tree” means a living or dead, standing or downed, woody plant characterized by one main stem or trunk and many branches, or a multi-stemmed trunk system with a definitely formed crown, and having a trunk 4 inches or more in diameter (maximum cross section) at a point 24 inches above mean ground level at the base of the trunk.

“Vegetated corridor” means the area of setback between the top of the bank of a protected water feature or the edge of a delineated wetland and the delineated edge of the WQR water quality resource area as defined in Table 19.322.17-1 Table 1.

“Water quality resource (WQR) areas” means a protected water feature(s) and the adjacent vegetated corridors and the adjacent water feature as established in Chapter MMC Section 19.322. The following definitions relate to WQR areas and Habitat Conservation Areas in particular:

“Mitigation” means the reduction of adverse effects of a proposed project on the natural environment by considering, in this order: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (12) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (23) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (34) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and/or (45) compensating for the impact by replacing or providing comparable substitute WQR water quality resource areas or HCAs.

“Significant negative impact” means an impact the affects the natural environment, considered individually or cumulatively with other impacts on the WQR water quality resource area and/or HCA, to the point where the existing water quality functions and values of water quality and/or fish and wildlife habitat are degraded.

“Water quality and floodplain management area” means the area that identifies where the WQR water quality resource area and floodplain management area overlay zone is applied.

“Wetlands” means those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

Other Definitions related to natural resources (no proposed changes):

“Debris” means discarded man-made objects that would not occur in an undeveloped stream corridor or wetland. Debris includes, but is not limited to, tires, vehicles, litter, scrap metal, construction waste, lumber, plastic, or styrofoam. Debris does not include objects necessary to a use allowed by this ordinance or ornamental and recreational structures. Debris does not include existing natural plant materials or natural plant materials which are left after flooding, downed or standing dead trees, or trees which have fallen into protected water features.

“Disturb” means to make changes to the existing physical status of the land that are made in connection with development. The following changes are excluded from the definition:

enhancement or restoration of the Water Quality Resource Area and planting native cover identified in the Milwaukie Native Plant List.

“Landscaping” means vegetation and materials, including, but not limited to, shrubs, grass, trees, planting beds, and bark dust.

“Restoration” means the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function and/or diversity to that which occurred prior to impacts caused by human activity.

“Watershed” means a geographic unit defined by the flows of rainwater or snowmelt. All land in a watershed drains to a common outlet, such as a stream, lake, or wetland.

Commentary

Milwaukie Municipal Code (MMC) - Section 19.322

WATER QUALITY AND NATURAL RESOURCE OVERLAY

The City is proposing to repeal the current Milwaukie Municipal Code (MMC) Section 19.322 ("Water Quality Resource Regulations") and replace it with a new, expanded section that regulates water quality resources as well as other natural resource areas. This would ensure that the City's municipal code is compliant with Statewide Land Use Planning Goals 5 and 6 and Titles 3 and 13 of the Metro Urban Growth Management Functional Plan (UGMFP).

Statewide Goal 6 ("Air, Water, and Land Resources Quality") and Metro Title 3 ("Water Quality, Flood Management, and Fish and Wildlife Conservation") focus on protecting water quality resources such as streams, wetlands, and adjacent buffer areas by regulating activities that take place in or near those resources.

Statewide Goal 5 ("Natural Resources, Scenic and Historic Areas, and Open Spaces") and Metro Title 13 ("Nature in Neighborhoods") are concerned with protecting and enhancing fish and wildlife habitat along stream corridors and improving connections with upland habitat areas.

19.322.1 Intent

- A-D. The purpose of the Water Quality and Natural Resource (WQNR) regulations is to protect designated natural resources and encourage their restoration. Section 19.322 makes the City's code compliant with applicable state and regional rules governing natural resources.
- E. This subsection explains that, as long as no new development is proposed, the regulations do not require property owners to restore designated natural resource areas or prevent them from maintaining existing conditions such as landscaping. However, new activity that impacts the resource area may trigger the requirements of this subsection.
- F. Situations that become nonconforming as a result of the code amendment will not be required to come into conformance by any particular date, though they will be subject to the nonconforming standards of MMC Chapter 19.800 if any expansion of the nonconformity is proposed.
- G. This subsection introduces the Water Quality and Natural Resource Map (WQNR map) as a tool incorporated into the code by reference rather than something that is part of the official zoning map. This distinction is intended to make it possible to

correct or adjust the map over time without needing a formal Zoning Map Amendment or "zone change."

- H. This subsection introduces the "Milwaukie Native Plant List" as a document maintained by the Planning Director. At present, the Planning Director is using the City of Portland's native plant list (updated in July 2010) as the Milwaukie Native Plant List (<http://www.portlandonline.com/bps/index.cfm?c=45131>). The Portland list includes native plants that are recommended for use in this region as well as non-native plants that should be removed according to the degree of nuisance they present. The plant list is referenced in the code but can be updated without requiring a formal code amendment.
- I. The "Milwaukie Chemicals of Concern" list is referenced in the code as a tool for tracking chemicals that are known to be harmful to water quality and habitat health. As noted in the Prohibitions section (19.322.5), chemicals on this list may not be applied within designated natural resource areas.

19.322.2 Coordination with Other Regulations

This subsection lists other regulations and agencies that may apply or have jurisdiction over projects near water bodies and wetlands.

The Willamette Greenway overlay (MMC Section 19.320) establishes a 25-ft vegetation buffer along the river but also provides protection for existing views and view corridors between the river and downtown Milwaukie. Because Section 19.322 generally aims to preserve vegetation, there is some inherent conflict in these two code sections. The language in this subsection makes it clear that the WQNR code's protections of vegetation supersede all of the Willamette Greenway regulations except where view corridors are concerned.

19.322.3 Applicability

- A-B. Water Quality Resource (WQR) areas and Habitat Conservation Areas (HCAs) are shown on the WQNR map. The WQNR map provides the basis for determining whether or not Section 19.322 applies to a particular property. An applicant's agreement with the resource boundaries shown on the WQNR map does not constitute or require a land use application. If an applicant believes that the WQNR map is inaccurate, Subsection 19.322.16 provides mechanisms for verifying the resource boundary and correcting the map.

WQR areas are determined according to Table 19.322.16-1, which establishes vegetated corridors alongside or around protected water features such as streams and wetlands. The WQNR map is intended to be a general indicator of the location of these WQR areas; field measurements that cross reference the table are what will determine specific locations. For HCAs, the WQNR map is intended to show the

Commentary

actual location of the resource, based on the most recent aerial photographs and the data available from Metro's original resource inventory.

- C. The WQNR code applies to properties that contain a designated natural resource area, particularly to certain activities proposed to take place within the resource area. If a particular activity is proposed within 100 ft of a resource area, a construction management plan may be required.
- D-E. Activities on properties that do not contain a designated natural resource area but that are adjacent to one can still have an impact on the resource. The requirement to provide a construction management plan applies to activities within 100 ft of a resource area that will disturb more than 150 sq ft.

Activities that occur more than 100 ft from a resource area are not subject to Section 19.322.
- G. Table 19.322.3-1 summarizes when the WQNR regulations apply, including when a construction management plan is required. For properties that do not contain a designated natural resource area, providing a construction management plan is the most that will be required.
- H-I. Table 19.322.3-2 indicates what levels of review are needed for various activities. Projects that require minor quasi-judicial review (public hearing with the Planning Commission) are required to have a pre-application conference with staff.

19.322.4 Exempt Activities

This subsection lists the activities that are not subject to Section 19.322, even if some of those activities may require another type of development permit. The list is organized to show that some activities are exempt within both WQR areas and HCAs (Subsection A), while other activities are exempt only within HCAs (Subsection B). Exempt activities do not require preparation of a construction management plan unless they will disturb more than 150 sq ft of resource area.

Key exemptions include:

- A.3 In general, normal landscaping activities and the maintenance of existing landscaping features are allowed outright within designated resource areas. However, this exemption does not allow existing native vegetation to be removed and replaced by conventional landscaping. The WQNR code encourages the planting of native species and restoration of natural areas, as well as the removal of plants listed as "nuisance" or "required eradication" species on the City's Native Plant List.
- A.7 Existing structures can be maintained, repaired, and replaced as long as there is no change in the area of disturbance within the resource area.

- A.12 Tree removal is allowed under specific circumstances, including emergency situations and removal of a limited number of “nuisance” or “prohibited” trees. Trees that are already downed can be removed without further review, as long as no earth disturbance will be involved in the removal.

19.322.5 Prohibited Activities

The revised list of prohibited activities remains short and very similar to the existing list, with the following exceptions:

- C. Planting vegetation listed as “nuisance” or “required eradication” species on the Milwaukie Native Plant List is not allowed within designated resource areas. Property owners are allowed to maintain existing landscaping arrangements, but the only new plantings allowed in WQR areas or HCAs are native species.
- E. Application of chemicals that are known to be harmful to water quality and habitat health is not allowed within WQR areas and HCAs. This prohibition echoes a 2004 federal court ruling about the application of certain chemicals within 60 ft of fish-bearing streams. The “Chemicals of Concern” List will be updated on an ongoing basis to reflect the latest understanding of the pesticides and other chemical-based products that can damage the resource areas that Section 19.322 aims to protect.

19.322.6 Activities Permitted Under Type I Review

Type I review is the most basic level of review for land use applications. Proposals are evaluated by staff against clear and objective criteria—either a proposal meets the standards or it does not (see MMC Subsection 19.1011.1). Type I applications do not require a public hearing or public notice.

- A. Review of construction management plans and the boundary verification process will be handled with Type I review.
- B. Most proposals for tree removal that do not qualify as exempt will be processed with Type I review. These scenarios include trees that present an eventual hazard to people or property (but not an immediate emergency), trees that can be shown to be diseased or dying, and “nuisance” or “required eradication” trees (4 or more). Significant pruning, defined as removal of more than 20% of the tree canopy or more than 10% of the root system, also requires Type I review. Trees that are approved for removal through the Type I process must be replaced on a one-to-one basis.
- C. Projects that can meet the standards established in Subsection 19.322.13.D for HCAs can be handled with the Type I process. This allowance does not extend to disturbance of WQR areas, which usually requires more extensive analysis of impacts and minor quasi-judicial review by the Planning Commission.

Commentary

- D. Activities in accordance with an approved natural resource management plan are exempt from the WQNR code. However, natural resource management plans themselves need some level of review for approval. Natural resource management plans can be approved with Type I review if they have been prepared by a qualified agency. This is a change from existing policy, which requires Planning Commission review to approve a management plan. The proposed rules recognize that a plan prepared in accordance with a qualified agency's standards should be presumed to be adequate to protect the resource.

19.322.7 Activities Permitted Under Type II Review

Type II applications are evaluated by staff against clear criteria with limited discretion, and an approval may be accompanied by conditions. In the Type II process, the City mails a "tentative decision" to property owners and residents within 300 ft of the site (see MMC Subsection 19.1011.2). No public hearing is required, but those receiving notice have two weeks to comment on the decision before it becomes final.

- A. Several "special uses" can be reviewed through a Type II process if they meet the standards in Subsection 19.322.11. These special uses include new public or private utility facilities (sewer, water, electricity, gas, etc.), improvement of existing utility facilities, new stormwater pre-treatment facilities, stormwater management plans, and pedestrian and bike paths. The current policy requires that many of these activities go through minor quasi-judicial review, which is excessive for approving what are often basic infrastructure items. In the proposed code, if the use cannot meet the standards of Subsection 19.322.13 it will require minor quasi-judicial review by the Planning Commission.
- B. Natural resource management plans that do not meet the standards for Type I review will be processed as Type II applications.
- C. Current WQR policy requires all partitions involving WQR areas to undergo a minor quasi-judicial review. However, partitions usually require only Type II review. The proposed code acknowledges that if a partition can be done in such a way that most or all of the resource area (WQR area and/or HCA) is placed in a separate, unbuildable tract, the resulting protection is sufficient to allow such a "low-impact" partition to undergo Type II review.
- D. Certain activities that result in very limited disturbance to WQR areas can be reviewed through the Type II process. These activities include farming practices or landscaping activities that result in some direct stormwater discharge, or alteration or expansion of existing buildings that disturbs a limited portion of the WQR area. These activities must meet the discretionary criteria of Subsection 19.322.14 (including the requirement to provide an evaluation of potential impacts and analysis of alternatives).

19.322.8 Activities Permitted Under Minor Quasi-Judicial Review

Minor quasi-judicial review (sometimes referred to as "Type III" review) is a higher level of review that involves a public hearing and decision by the Planning Commission (see MMC Subsection 19.1011.3).

Unless an activity is prohibited or otherwise classified for Type I or Type II review, it is most likely subject to minor quasi-judicial review. This includes new development that will disturb HCAs and cannot meet the non-discretionary standards provided in Subsection 19.322.13.D. It includes subdivisions as well as partitions that do not qualify as "low-impact" partitions as outlined in Subsection 19.322.12.G.

19.322.9 Construction Management Plans

Construction management plans are an important tool for ensuring that resource areas are adequately protected from impacts that might result from development and other activities. Construction management plans are subject to Type I review.

- B. Construction management plans should provide specific details about how work will be conducted on the site, including much of the same information required on a standard erosion control plan. The threshold for requiring a construction management plan (150 sq ft of disturbance) is less than that for requiring an erosion control plan (500 sq ft), so the construction management plan will ensure that adequate erosion control measures are in place for any significant activity near a resource area. For larger-scale projects, the standard erosion control plan can be modified to serve as an approvable construction management plan.

19.322.10 Natural Resource Management Plans

The City wants to encourage property owners and land managers who are interested in restoring and enhancing WQR areas and HCAs to develop natural resource management plans as a guide for their activities. An approved management plan will provide a blanket approval for what would otherwise be processed as separate activities for tree removal, earth disturbance, etc. The revised code will make it easier to do a natural resource management plan by amending the current policy, which requires Planning Commission review to approve the plan.

- A. The City will approve natural resource plans through Type I review if they have already been approved by any one of several agencies acknowledged to have the necessary expertise.
- B. Management plans that have not already been approved by an acknowledged agency but that have otherwise been prepared in accordance with the standards set by the Oregon Watershed Enhancement Board, Oregon Department of Fish and Wildlife, or Oregon Division of State Lands can be processed with Type II review.

Commentary

- E-F. To ensure that restoration and enhancement activities are genuinely based on a long-term effort, management plans must address a period of at least five years. And to ensure that the plans are updated and adapt to changing conditions, they must be renewed after five years.

19.322.11 Special Uses

This subsection provides specific review standards for the "special uses" outlined in Subsection 19.322.7.A. If they can meet the standards provided in Subsection 19.322.11, those special uses can be approved with Type II review; otherwise, they require minor quasi-judicial review and are subject to the general discretionary review criteria provided in Subsection 19.322.14.

19.322.12 Land Division and Property Line Adjustments

When new lots are created or property lines are moved on sites that include designated natural resource areas, it is important to consider how the resource areas are distributed among the properties and whether it is possible to put all or most of the resource in a separate tract to minimize the potential for disturbance. Lot consolidation, which combines separate properties into a single unit of land, does not present the same potential for redistribution of the resource.

- C. Platting new parcels or lots is more a matter of paperwork than actual earth-disturbing activity, but the act of drawing new boundary lines on a property can impact designated resource areas by determining how future development could occur. Since public improvements (streets, curb and gutter, sidewalks) are usually required to be constructed as part of the final plat process, it is important to ensure that any designated resources will be adequately protected and any disturbance will be mitigated during the land division process.
- D. Applicants have the option of mitigating for future impacts from development either at the time of land division or when the future development happens.
- E. Property line adjustments (PLAs) are normally processed with Type I review. PLAs do not create new lots and do not usually offer an opportunity to establish a separate tract for the resource area. But shifting the boundary between two adjacent properties can affect the distribution of a designated resource area and therefore could increase the potential for disturbance of the resource.

The current WQR code does not set an allowable amount of disturbance for WQR areas like the revised code does for HCAs. When a partition or subdivision involves a WQR area, either the entire resource is placed in a separate, unbuildable tract or the required impact evaluation report must explain how the proposed lot configuration represents the best alternative. When a PLA involves the redistribution of a WQR area, the revised code requires some level of additional review.

PLAs involving the redistribution of HCAs can be processed with Type I review if they maintain no more than a 30-point difference in the percentage of HCA on each property. If a previous land division allowed a difference greater than 30 percentage points and the proposed PLA will not increase that difference, the PLA can proceed with Type I review. Otherwise, the PLA is subject to Type II review.

- F. Replats are a type of land division that re-configure parcels or lots that were created by partition or subdivision in the past. Depending on the number of lots that will result from a proposed replat, it will be similar in scale to either a partition or a subdivision and will be treated as such by the revised code.
- G. Under the existing WQR code, all partitions involving WQR areas require minor quasi-judicial review. The revised code establishes a category of "low-impact" partitions, in which most or all of the resource area is placed in a separate, unbuildable tract. Low impact partitions can be reviewed with the Type II process, which is the level of review partitions normally receive.
- H. Partitions that do not meet the "low-impact" standards will be reviewed through the minor quasi-judicial process and encouraged to produce the smallest practicable difference in the percentage of HCA distributed across the new parcels. When WQR areas are involved, an impact evaluation and alternatives analysis must also be conducted to demonstrate the least possible impact on the resource.
- I. Subdivisions involving WQR areas or HCAs will be required to place most or all of the resource in a separate, unbuildable tract. If a proposal cannot meet that standard, then the applicant must demonstrate that there will be adequate buildable areas outside the resource areas and must conduct an impact evaluation and alternatives analysis to demonstrate the least possible impact on the resource.
- J. When new lots are created, it is preferable to place any affected natural resource area within an unbuildable tract, to separate the resource from potential future development areas. To ensure the best possible management over the long term, the revised code discourages common ownership of the tract because experience has shown that ownership by a private individual or public or private agency or organization results in more attentive and hands-on stewardship of the resource. Furthermore, the boundaries of the tract must be flagged or otherwise marked to clearly distinguish it from adjacent properties.

19.322.13 Development Standards

The development standards provided in the current WQR code are narrowly focused on protecting habitat during construction. The revised code re-organizes and expands this subsection to include mitigation requirements for WQR areas and HCAs. It also provides the non-discretionary standards for HCA disturbance that are an integral part of the Nature in Neighborhoods program.

Commentary

- A. This subsection is home to what are listed in the current WQR code as "development standards," practices aimed at protecting resource areas throughout the development process.
- B. This subsection provides general requirements for mitigating disturbances to resource areas. The revised code makes a distinction between temporary and permanent disturbances, though both must be mitigated and both must be counted when calculating the maximum disturbance area for HCAs.
- C. In the revised code, Table 19.322.13-1 in the revised code is a modified version of Table 19.322.9.E in the current WQR code, which includes several redundancies and could be clearer. One significant change is that the mitigation requirements now clearly apply to the entire WQR area on the project site and not just the area disturbed by development. The reasoning is that areas that are temporarily disturbed will obviously need to be replanted and restored, while areas that are permanently disturbed (e.g., removed to accommodate a new structure) cannot be restored but instead must be mitigated for elsewhere on the site. The current table does not make this requirement clear.
- D. One difference between the protections for WQR areas and those for HCAs is that the revised code allows for some limited disturbance of the HCA. This subsection provides a method for calculating allowable HCA disturbance and establishes requirements for mitigation that can be approved with Type I review.
 - D.1. For single-family residential projects, the allowed disturbance area is 50% of the HCA or 5000 sq ft, whichever is less. For all other uses (multi-family residential, commercial, industrial, etc.), the limit is 10% of the HCA. Projects that cannot meet these standards must go through the minor quasi-judicial review process by the Planning Commission and must provide an evaluation of impacts and analysis of alternatives to make the case for disturbing more of the HCA.
 - D.2. Mitigation for disturbance to an HCA is required, with two options that involve planting trees and shrubs: (1) replace trees in proportion to the diameters of those that are removed, or 2) plant trees in proportion to the total area of disturbance. The developer must choose whichever formula results in more new trees.

The mitigation standards apply only to trees removed in development scenarios. They do not apply to the tree removal that is exempt from review (Subsection 19.322.4.A), to tree removal that meets the Type I criteria outlined in Subsection 19.322.6.B, or to tree removal involved with an approved natural resource management plan. Exempt tree removal does not require any tree replacement, Type I tree removal requires replacement on a one-to-one basis, and natural resource

management plans outline a regimen of removal and replacement that is unique to each particular situation.

19.322.14 General Discretionary Review

When a proposed activity requires minor quasi-judicial review, or when there are no specific review standards provided elsewhere in the code (such as for the activities listed in Subsection 19.322.7.D), the activity is subject to the discretionary development standards of this subsection.

- A. The primary item for consideration is a professionally prepared report that evaluates impacts and analyzes alternatives. This subsection provides a detailed outline of the information that should be in that report.
- B. In determining whether the proposed disturbance is allowable, an applicant must demonstrate how the project follows three fundamental principles: (1) avoid disturbing the resource area, (2) when disturbance is unavoidable, minimize the impacts, and (3) mitigate for any disturbance by replanting and restoring the resource area. These three principles are the criteria by which each project is judged when discretionary review is required.
- C. When a project proposes to disturb an HCA and cannot meet the non-discretionary standards for allowable disturbance and/or for mitigation as provided in Subsection 19.322.13.D, it may request permission to increase the disturbed area and/or to vary the number and/or size of required plantings.

19.322.15 Adjustments and Variances

The current WQR code provides a platform for requesting a variance from the WQR rules. The revised code expands this subsection to include adjustments and outlines a specific allowance for cluster development.

- A. The revised code allows adjustments to certain standards as an incentive for applicants to avoid or at least minimize a project's impacts on a designated natural resource area. There are adjustments to particular base zone standards as well as to specific lot design standards. These adjustments are available by right, without needing any special approval. No adjustment may be used by an applicant to avoid the requirements to verify the resource boundary and provide a construction management plan.

The two adjustments allowed to base zone standards are a 10% reduction in required yard setbacks and a reduction of the rear yard setback to 10 feet. These allowances do not extend to the additional setbacks required for community service uses or conditional uses. Nor do they extend to the additional setbacks required along certain major streets or to front yard setbacks that may have already been adjusted because of adjacent nonconforming yard situations.

Commentary

When new lots are created or property boundaries change, the required lot dimensions (width and/or depth) may be adjusted by up to 10% of the original standard. The lot frontage on a public street may also be reduced by up to 10%.

- B. Requests to deviate from particular standards require a standard variance request (MMC 19.700). The revised code will allow an applicant to use economic hardship as a justification for the variance request, an argument that is not usually admissible in a standard variance application.
- C. In residential development scenarios, "clustering" enables an applicant to develop a property to its normal density while concentrating the dwelling units in such a way that avoids or minimizes impacts to the designated resource. At least 50% of the resource area must be set aside in a common open space, but the whole resource area may be factored into the calculation of the maximum number of dwelling units allowed.

This clustering allowance requires minor quasi-judicial review and the submittal of an impact evaluation and alternatives analysis and gives the Planning Commission an opportunity to consider creative design options without requiring the applicant to meet the less flexible variance criteria. At the Planning Commission's discretion, cluster developments may be allowed to incorporate housing types that would not otherwise be permitted in the base zone.

19.322.16 Boundary Verification and Map Administration

The Water Quality and Natural Resources (WQNR) map serves as a baseline indicator of the location of designated natural resource areas. The WQNR map will be used as the first step to determining whether the standards of Section 19.322 apply to a particular property. If a property owner wishes to challenge the accuracy of the map, this subsection provides a process for doing that. Since the methods for establishing WQR areas and HCAs are different, the means of verifying the boundaries of each are different.

- A. The WQNR map shows the approximate location of WQR areas, which can be more accurately measured in the field as needed. In the case of streams and creeks, the 50-ft vegetated corridor that comprises the bulk of the WQR area can be measured fairly simply from the top of the bank. In the case of wetlands, an official delineation may be required. The degree of detail necessary will depend largely on the specifics of the site and the proposed activity.
- B. The WQNR map shows the actual location of HCAs, based on the best information available. However, the scale of the original, region-wide inventory of resources is such that property owners may choose to make small corrections to remove existing structures or paved areas may be necessary. Such corrections can be handled on a case-by-case basis for specific proposals. If a property owner wishes to challenge the validity of a particular HCA designation, a professional reassessment of the original inventory will be necessary.

C, D. The revised code will change how the City administers and maintains WQNR map, allowing it to be updated and corrected more easily than is currently possible. The existing WQR policy requires a zoning map amendment and major quasi-judicial review by both Planning Commission and the City Council, even for simple corrections. In practice, this onerous review process has resulted in the City not keeping the map current, even when, for example, an application provides a wetland delineation approved by DSL. The revised code establishes the WQNR map as an administrative tool that can be updated by staff as specific proposals are presented and particular boundaries are verified. The boundary verification process involves Type I review; since changes to the WQNR map can be made administratively, map administration is also essentially a Type I process.

MMC Section 19.103

DEFINITIONS

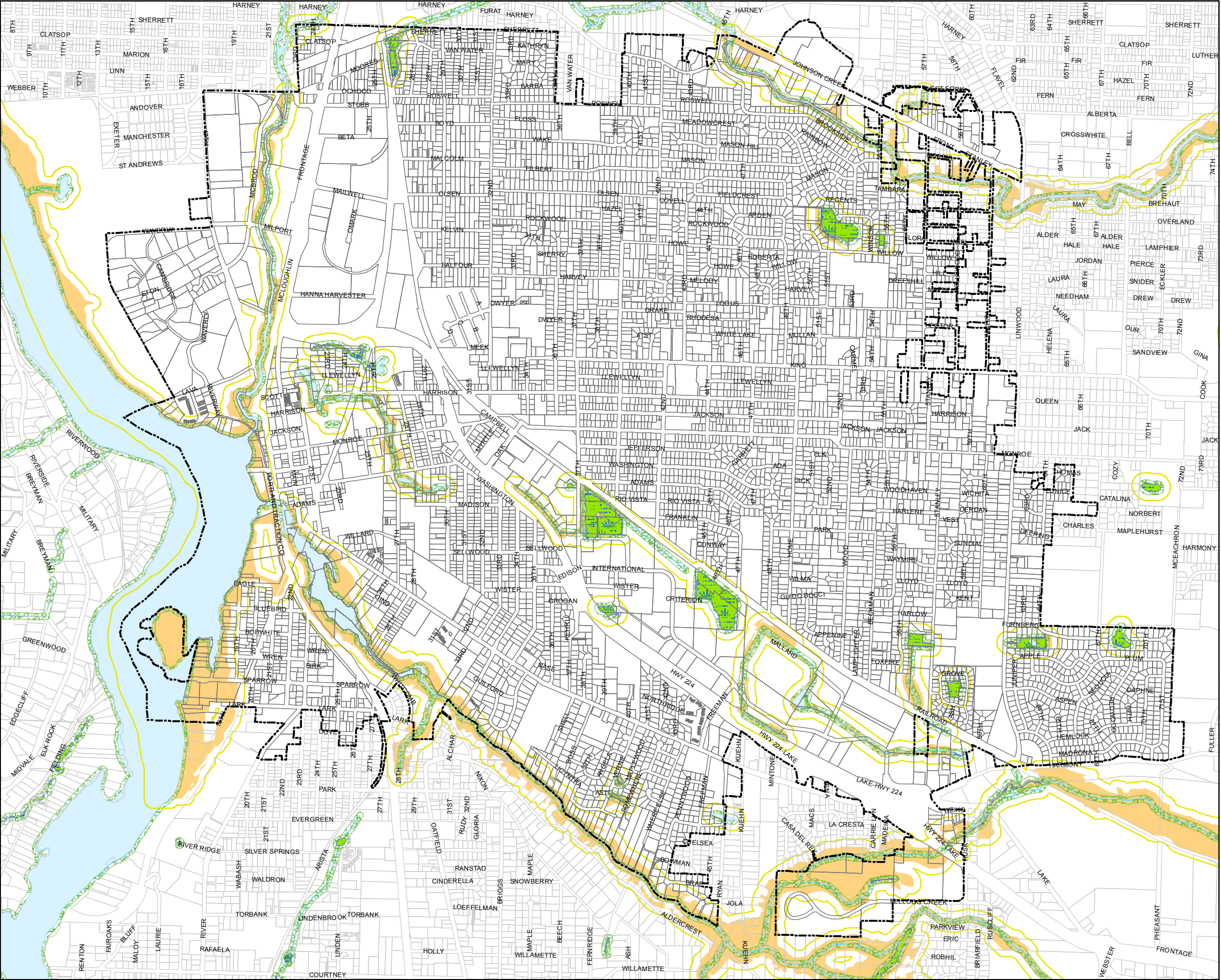
Some new or revised definitions are proposed to ensure that terms defined in Section 19.103 are kept current and remain consistent with the proposed amendments to 19.322. Text to be removed is marked with a ~~strike through~~, while text to be added is underlined.

In particular, the following changes or additions are proposed:

- o A revised definition for "bankful stage," to clarify that this term is synonymous with the phrase "top of bank."
- o A new definition for "direct stormwater discharge," to distinguish between particular activities that need different levels of review.
- o New definitions for "Downed tree" and "Tree," to clarify particular options for both exempt and Type I tree removal.
- o A new definition for "Habitat Conservation Area (HCA)."
- o A revised definition of "Native vegetation or native plant" to coordinate with the "nuisance" and "required eradication" listings of plants on the Milwaukie Native Plant List.
- o A revised definition for "net acre," to clarify that designated natural resource areas do not count against a property when calculating its allowable density.
- o A revised definition of "Protected water features" to include a description of "Title 3 wetlands."
- o A new definition for "Significant pruning," to enable a Type I review process for one particular option for tree maintenance.
- o Revised definitions of "vegetated corridor," "Water Quality Resource (WQR) area," "Water quality and floodplain management area," and "Wetlands," for greater accuracy.

City of Milwaukie
Water Quality and
Natural Resource (WQNR)
Map

Draft Map 5



Legend

- City Limits
- Taxlots
- 100-ft Trigger Line
- Water Quality Resource Areas**
 - Rivers, Streams, and Ponds
 - Wetlands
 - Vegetated Corridor
- Habitat Conservation Areas**
 - Regulated

Data Sources: Metro's RLIS Lite CD
(May 2010) and Metro's Title 13
GIS Data

0 800 1,600 3,200
Feet



Author: City of Milwaukie Planning Department
Revised: December 15, 2010
Source: City of Milwaukie GIS, Clackamas County GIS,
Metro Data Resource Center
All data depicted is approximate.
Not suitable for building or engineering purposes.



MILWAUKIE

Dogwood City of the West

To: Planning Commission

From: Katie Mangle, Planning Director *KM*
 Susan Shanks, Senior Planner
 Li Alligood, Assistant Planner

Date: January 4, 2011, for January 11, 2011, Worksession

Subject: Residential Development Standards Project – Briefing #2

ACTION REQUESTED

None. This is a briefing for discussion only. Staff is seeking feedback from the Planning Commission on the refined public involvement plan (to be distributed at the meeting) and survey questions (Attachment 1) for the upcoming Residential Development Standards project.

BACKGROUND INFORMATION

A. History of Prior Actions and Discussions

- **October 2010:** Staff provided the Planning Commission with a project setup summary including the scope of work and project schedule, and discussed the formation of a Commission subcommittee to guide the project.
- **March 2010:** Staff provided the Planning 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.
- **August 2009:** Planning Commission reviewed and provided concurrence on the Action Plan presented in the 2009 *Smart Growth Code Assessment Final Report*.
- **July - August 2009:** Planning Commission held two worksessions to discuss the consultant's code assessment findings prepared during Phase I of the Smart Growth Code Assistance project.

B. Residential Development Standards

In 2009, the City completed the *Smart Growth Code Assessment Final Report*, which included an assessment of key aspects of Milwaukie's zoning code and an Action Plan for improvement. Over the past year, staff and the Commission have been focused on the first

part of the Action Plan, a “tune up” of the City’s land use and development review procedures that will ensure the City has a solid base on which to enhance development standards for residential development. In the coming year, staff plans to focus on the other priorities identified by the Action Plan, namely a review and update of the various policies and regulations that collectively serve to shape the location and form of new residential development in Milwaukie.

For every major legislative project, staff begins with research to understand the existing policies and where they came from. To that end, staff has reviewed past code audits and policy decisions to understand how Milwaukie’s residential development policies have evolved over time and what alternatives have been considered. See Attachment 2 for staff’s research on the history of the City’s residential use zones and residential development and design standards.

The City’s Comprehensive Plan policies clearly support high standards for the design and compatibility of new residential development, but these policies have not yet been fully implemented by the zoning code. See Attachment 3 for a summary of current Comprehensive Plan policies, and Attachment 4 for a summary of current residential use, development, and design standards.

As a component of the public involvement plan for this project, City staff and Marcy McInelly, AIA, of Urbsworks, Inc. (formerly of SERA Architects), have drafted a web-based survey to gather data on what the residents and property owners think about existing residential development in the City and what they would like to see in the future. Staff would appreciate Planning Commission feedback on this document (Attachment 1). Are we asking the right questions? Is it understandable? Staff intends to broadly distribute this survey in January, including meeting with the NDA leadership on January 26, 2011. The hope is that this survey will also help spread the word about this project and prompt more people to be involved in subsequent phases of the project.

C. Next Steps

In January and February 2011, City staff and Marcy McInelly, AIA, will begin implementation of the public involvement plan, including development of a project web site, stakeholder interviews, forming a project steering committee, and conducting an online survey. Ms. McInelly will prepare materials to illustrate existing and alternative residential development standards for discussion by small stakeholder groups and the Planning Commission subcommittee.

ATTACHMENTS

1. Draft Resident Survey
2. December 21, 2010, Residential Development Standards Code History Memo
3. October 27, 2010, Residential Development Standards Comprehensive Plan Evaluation
4. November 17, 2010, Residential Development Standards Code Summary Memo



City of Milwaukie

Residential Development Standards Survey

The City of Milwaukie is updating its regulations for residential development outside of the downtown zones, and we want your input!

Project outcomes may include:

- Updated site and building design standards for new single-family homes.
- New building design standards for single-family home expansion projects.
- New site and building design standards for new multifamily development.
- Allowance for a greater diversity of residential dwelling types.

The City governs development in residential zones by regulating uses, site design, and building design.

- Uses. Residential zones allow certain types of uses. Some are very restrictive and only allow single family dwelling. Others are more permissive and allow a range of uses including single family, multifamily, and office uses.
- Site Design. Development standards regulate how a site is designed including, but not limited to, where buildings and parking can be located and how much landscaping is needed.
- Building Design. Design standards regulate how a building looks including, but not limited to, the number and size of windows, building materials and colors, and the pitch of the roof.

Please take a few minutes to complete this survey to help shape the future look and feel of the City's residential areas.

You can complete the survey online at www.surveymonkey.com.

You can also print out a hard copy and return it to Susan Shanks at the Planning Department (6101 SE Johnson Creek Blvd, Milwaukie, OR 97206).

Please complete and return your survey by: **February 15, 2011**

All information is anonymous and confidential. No information will be identified with any specific property and no answers will result in code enforcement actions against survey participants.

1. Zip Code (Required)
2. Nearest Milwaukie intersection to where you live. If you don't live in Milwaukie, indicate the nearest intersection to your place of business or employment in Milwaukie. (Required)
3. Age
4. Gender
5. Tell us about yourself: "In Milwaukie, I..." (Check all that apply)
 - ☐ Own a home
 - ☐ Rent a home or apartment
 - ☐ Own property other than a home
 - ☐ Work
 - ☐ Own a business
 - ☐ Manage a business
 - ☐ Other (please specify)
6. The City's residential zones are divided into two types (excluding downtown):
 - Multifamily residential zones, which allow multiple dwellings on one lot, as well as single family homes and duplexes
 - Single family residential zones, which allow single family homes and, in some cases, duplexes.

What types of residential structures do you think are appropriate in **multifamily** residential zones outside of downtown? (Check all that apply)

 - ☐ Accessory dwelling units (also called granny flats, mother-in-law units, etc.)
 - ☐ Duplexes (2 dwelling units that share one wall)
 - ☐ Townhouses (3 or more dwelling units that share walls)
 - ☐ Multiple dwellings *in one building* (e.g., an apartment or condominium building)
 - ☐ Multiple dwellings *on one lot* that share parking and yard space (e.g., several cottages on one lot)
 - ☐ Individual dwellings on small lots (smaller than 5,000 square feet)
 - ☐ Other (describe)

7. In addition to being someone's home, properties in residential zones may also allow other uses such as home-based businesses, regular social gatherings (e.g. book clubs or support groups), farming activities, RV or boat storage, and/or garage or room rental by others.

What kinds of uses do you think should be allowed in residential zones?

- A. In a single family residential zone?
- B. In a multifamily residential zone?
- C. In your neighborhood?
- D. In other neighborhoods?

8. When new residential development is built in your neighborhood, do you think it should:

- ☐ Blend in
- ☐ Be different
- ☐ Don't care

9. When new residential development is built in other neighborhoods, do you think it should:

- ☐ Blend in
- ☐ Be different
- ☐ Depends on neighborhood
- ☐ Don't care

If it depends on the neighborhood, please clarify:

10. If "blending in" is important to you, in what ways should it be the same as what is already there? (Check all that apply)

- ☐ Size
- ☐ Design
- ☐ Shape
- ☐ Exterior materials
- ☐ Placement on the lot (setbacks)
- ☐ Other (please specify)

11. If "being different" is important to you, in what ways should it be different from what is already there? (Check all that apply)

- ☐ Size
- ☐ Design
- ☐ Shape
- ☐ Exterior materials

- ☐ Placement on the lot (setbacks)
- ☐ Other (please specify)

12. Do you think residential areas in Milwaukie have a special character?

- ☐ Yes
- ☐ No

If "Yes," please describe:

A. What qualities do you think are most important to keep or protect?

B. What would you change if you could?

- In your neighborhood?
- In other neighborhoods?

13. If you own residential property, have you ever thought about using the property in the following ways? (Check all that apply)

- ☐ Adding an accessory building, such as a detached garage or a garden shed
- ☐ Adding an accessory dwelling unit, either:
 - ☐ Attached to the main house, such as an apartment in the basement or a converted garage
 - ☐ Detached from the main house, such as above a detached garage or in a separate cottage
- ☐ Creating a duplex
- ☐ None of the above
- ☐ Other (please describe)

14. If you answered "None of the above" to Question #11, might there be conditions or life changes in the future that would cause you to change your answer?

- ☐ Yes
- ☐ No

If "Yes," please explain.

15. If you own residential property with a garage, have you ever thought about converting the garage to a use other than auto parking?

- ☐ Yes
- ☐ No

If “Yes,” for what use?

- ☐ Expansion of existing living area
- ☐ Home office
- ☐ Apartment
- ☐ Guest quarters
- ☐ Other (please describe)

16. If you answered “No” to Question #16, might there be conditions or life changes in the future that would cause you to answer “Yes”?

- ☐ Yes
- ☐ No

If “Yes,” please explain.

17. What should the City’s highest priorities be for this project?

18. Would you like to be contacted for an interview to discuss your experience and perspective about the City’s residential standards? If so, please provide your name and contact information.



To: Mary Dorman & Serah Breakstone, Angelo Planning Group

From: Li Alligood & Susan Shanks, City of Milwaukie Planning Staff

Through: Katie Mangle, City of Milwaukie Planning Director

Date: December 21, 2010

Subject: Task 6 City Deliverable – Code History Memo

The purpose of this memo is to provide an historical overview and current assessment of the City's standards for construction and remodeling of residential buildings. This memo includes a brief history of how the City created the current standards, highlighting key dates and policy decisions.

I. SUMMARY

Residential development in the City is guided by the policies of the Comprehensive Plan and implemented by the City's zoning ordinance ("the code"). At this time, most Comprehensive Plan policies relating to compatibility and design have not yet been implemented. The Residential Development Standards project will revise the zoning ordinance to better implement existing Comprehensive Plan policies.

Relevant Comprehensive Plan policies are found in Chapter 4 – Land Use, which addresses specific issues of balancing land uses within the City. Residential land use policy in the Comprehensive Plan is based on the concept that the City is, and will continue to be, composed primarily of single family neighborhoods. Current Comprehensive Plan policies strongly support City-wide design standards for single family and multifamily residential development; ensuring development compatible with existing single family neighborhoods; and provision of a variety of housing types to meet the needs of residents.

The code primarily implements the policies of the Comprehensive Plan through Milwaukie Municipal Code (MMC) Sections 19.301-309, the residential use zones, and MMC Chapter 19.400 Supplementary Development Regulations. The current zoning ordinance has been revised multiple times since its adoption in 1979, primarily to remain compliant with federal, state and Metro Functional Plan policies. There is longstanding tension between regional policies that encourage or require residential density within the Portland metropolitan area, and the local desire for low density single family development. This tension has resulted in residential standards that are fragmented, confusing, and at times contradictory.

Although design standards have been adopted for development in the Downtown Zones and for new single family residential construction, there are currently no design standards for multifamily housing or standards guiding the compatibility of infill development.

II. BACKGROUND

The residential standards update project is the result of a 2009 grant from the State of Oregon's Transportation and Growth Management (TGM) program, which funded a phased code review and revision project. The State contracted with Angelo Planning Group (APG) to review the City's residential standards. There are 9 residential zones within the City outside the downtown zones, including high-density (R-1), medium density (R-2.5 and R-3), moderate density (R-5), and low-density residential (R-7 and R-10), and two mixed-use zones (R-1-B and R-O-C).

A. Overview of Current Standards

The City's base zone development standards apply to all new residential development in the City. Those standards identify requirements for:

- Minimum lot size, setbacks, street frontage requirements,¹ and vegetation.
- Maximum building height and lot coverage.
- Minimum and maximum density.²
- Off-street parking.³
- Street and utility improvements.⁴
- Building separation of 6 ft between a dwelling and other buildings on the lot.

Some lot size, front yard, building height, and density exceptions apply in all zones:⁵

- No dwelling can be built on a lot with an area of less than 3,000 square feet, regardless of the zone (an exception is the R-2.5 zone, where attached dwellings require only 2,500 square feet).
- Only 1 building designed for dwelling purposes is permitted per lot in the R-10, R-7, R-5, and R-3 zones.
- Buildings sited along certain major streets are subject to additional front yard setbacks.
- Required front yards can be reduced if the adjacent yards are less than the minimum setback.
- In high-density residential zones, one additional story may be permitted in excess of the required minimum standard in exchange for additional vegetation.
- Additional density may be permitted for dedication of parkland or below average unit prices (i.e. affordable housing units) in a housing development.

Table 1 provides an overview of current residential development standards for each zone (outside of downtown) that allows residential development. Corner lots in residential zones are subject to additional side yard setbacks.

¹ Every lot shall abut a public street for at least 35 ft; lots for interior single-family attached and condominium unit shall abut a public street for at least 20 ft.

² Minimum and maximum density requirements are triggered by subdivision, planned development, mixed use development, and other Type III applications and are not addressed in this summary.

³ Subject to the requirements of MMC Chapter 19.500 Off-Street Parking and Loading.

⁴ Subject to the requirements of MMC Chapter 19.1400 Public Facility Improvements.

⁵ MMC Subsection 19.401 General Exceptions.

Table 1. Residential Development Standards

Zone	Min. lot size	Max. Height⁶	Max. Lot coverage	Min. Lot Dimensions	Min. Setbacks
Residential-Business Office-Commercial Zone R-1-B	5,000 sf for 1 du; 1,400 sf per du over 1	3 stories or 45'	50%	50' width; no min. depth 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential-Office-Commercial Zone R-O-C	5,000 sf for 1 du; 1,400 sf per du over 1	3 stories or 45'	50%	50' x 80' 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential Zone R-1	5,000 sf for 1 du; 1,400 sf per du over 1	3 stories or 45'	45%	50' x 80' 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential Zone R-2	5,000 sf for 1 du; 2,500 per du over 1	3 stories or 45'	45%	50' x 80' 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential Zone R-2.5	3,000 sf for 1 du; 2,500 sf for attached du	35'	40%	SFR: 40' x 75' Attached: 25' x 75'	15 ft front, 5 ft side (15 ft corner)
Residential Zone R-3	5,000 sf for 1 unit; 3,000 sf attached du	2.5 stories or 35'	40%	50' x 80' 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential Zone R-5	5,000 sf per du	2.5 stories or 35'	35%	50' x 80' 30' width for interior attached	20 ft front, 5 ft side (15 ft corner), 20 ft rear
Residential Zone R-7	7,000 sf per du	2.5 stories or 35'	30%	60' x 80' 30' width for interior attached	20 ft front, 5 ft/10 ft side (20 ft corner), 20 ft rear
Residential Zone R-10	10,000 sf per du	2.5 stories or 35'	30%	70' x 100' 30' width for interior attached	20 ft front, 10 ft side (20 ft corner), 20 ft rear

APG conducted an assessment of the City's residential standards⁷ and identified 4 areas that needed improvement:

- Single-family residential design standards
- Compatibility standards for residential infill and redevelopment
- Multi-family design standards
- Housing type variety, including accessory dwelling units

⁶ Building height is measured from the adjoining street centerline grade to the mean height level between the eaves and ridge for a gable, hip, or gambrel roof.

⁷ Angelo Planning Group, "August 2009 Final Report: City of Milwaukie Code Assessment."

The current base zone development requirements are the result of incremental revisions since the adoption of the City's first zoning ordinance in 1946. The establishment of each requirement is detailed below.

III. HISTORY OF RESIDENTIAL POLICY DEVELOPMENT

A. Zoning Ordinance History

The City's zoning ordinance has undergone four complete revisions since its adoption in 1946. Each revision is noted below and then followed by a more detailed summary.

1. 1946: The City's first zoning ordinance established 4 use zones (2 residential, 1 commercial, and 1 industrial) and residential development standards.⁸
2. 1968: Repealed the 1946 ordinance and established 6 residential zones, supplementary regulations, and off-street parking and loading provisions.⁹
3. 1975: Repealed the 1968 ordinance and adopted minimal revisions to residential standards and permitted uses.¹⁰
4. 1977: Substantial revisions, including adoption of minimum vegetation requirements.¹¹
5. 1979: Repealed the 1975 ordinance and all amendments to that ordinance. Added the minor quasi-judicial Transition Area Review (TAR) process, revised existing residential zones, revised housing type definitions and options, and adopted 2 new high density residential zones.¹²

In addition to the revisions described above, the Code was reformatted and digitized in 1991.¹³ Revisions to the Code have occurred in piecemeal fashion since 1979 through the City's amendment process.

Though the City's zoning ordinance addresses all types of development in the City, this review focuses on provisions relating to residential standards. Significant amendments to residential use and development standards are noted below.

1. 1946 Zoning Ordinance

The first ordinance was adopted in 1946, apparently to implement the newly-adopted Uniform Building Code.¹⁴ Although the adoption of both ordinances coincided with the end of World War II, there was no City Council discussion about housing shortages or anticipated development pressures as a reason for adopting a zoning ordinance.

The ordinance established 4 use zones, including 2 residential zones: Single Family Residential Zone 3-R-1 and Multifamily Residential Zone 3-R-2. This ordinance established:

- Minimum lot size, setbacks, and street frontage requirements.
- Maximum building height.

⁸ Ordinance 481, adopted June 24, 1946.

⁹ Ordinance 1183, adopted October 17, 1968.

¹⁰ Ordinance 1316, adopted July 7, 1975.

¹¹ Ordinance 1370, adopted August 1, 1977.

¹² Ordinance 1438, adopted November 5, 1979.

¹³ Ordinance 1712, adopted October 15, 1991 (File #ZA-91-02).

¹⁴ Ordinance 465, adopted August 13, 1945.

- Front yard exceptions.
- Restriction of 1 building designed as a dwelling per lot.

Accessory structures were permitted with very few restrictions:

- On any residential lot when located at least 50 feet from the front lot line and no less than 20 feet from any street frontage, or attached to or within the primary structure.
- Maximum height of 1.5 stories.

A 1962 amendment added provisions to allow accessory structures to be built within 5 feet of the lot lines under certain conditions: the structure must be at least 20 feet from any street frontage; all surrounding property owners must give written consent; and the structure's walls must be fire resistive for 4 hours.¹⁵

There were several amendments to the 1946 zoning ordinance regarding special uses in the residential zones, specifically duplex dwellings in the 3-R-1 zone.

2. 1968 Zoning Ordinance

The 1968 zoning ordinance was developed in conjunction with the City's first Comprehensive Plan,¹⁶ and repealed and replaced the 1946 ordinance. This zoning ordinance created 6 new residential zones: Residential Zone R-10; Residential Zone R-7; Residential Zone R-5; Apartment Zone A-3; Apartment Zone A-2; and Apartment-Business Office-Residential Zone A-1-B.¹⁷

Generally, the new residential zones permitted the following residential uses outright:

- R-10, R-7, and R-5 zones: Detached single family homes; in a "transitional" area, a duplex. The R-7 zone permitted "a use permitted outright in the R-10 zone," and the R-5 zone permitted "a use permitted outright in the R-7 zone."
- A-3 zone: Uses permitted in the R-10, R-7, and R-5 zones, duplexes, and apartments with fewer than 4 units.
- A-2 zone: Uses permitted in the A-3 zone and apartments with more than 4 units.
- A-1-B zone: Uses permitted in the A-2 zone.

The following residential uses were allowed conditionally, with Planning Commission approval:

- R-10, R-7, and R-5 zones: Duplexes, which required approximately 1/3 additional lot area. For example, a SFR in the R-10 zone required a 10,000 sf lot, while a duplex required a 13,500 sf lot.
- A-3 zone: Conditional uses permitted in the R-10, R-7, and R-5 zones; boarding, lodging, or rooming houses.
- A-2 zone: Conditional uses permitted in the A-3 zone; trailer park.
- A-1-B zone: Conditional uses permitted in the A-2 zone.

In addition to the provisions established by the 1946 ordinance, the 1968 ordinance

¹⁵ Ordinance 961, adopted July 9, 1962.

¹⁶ Resolution 2-1970, adopted January 12, 1970.

¹⁷ Ordinance 1183, adopted October 17, 1968.

established provisions for:

- Design review of new construction or substantial remodeling within design districts through Design Zone D (described in Section 3.G.2 below).
- Maximum lot coverage.
- Yard exceptions for lots abutting a major street.
- Lot size exceptions.
- Off-street parking.
- Transitional areas. Transitional uses such as duplexes and offices were permitted outright within transitional areas, which were defined as an area within a residential zone, abutting a boundary of a commercial or industrial zone, and extending not more than 100 ft into the residential zone.
- Buffer area review. Any use other than a single family dwelling adjacent to the R-10, R-7, R-5, or A-3 zone required buffer area review by the Planning Commission.
- Increased the permitted height accessory structures to 2.5 stories or 35 feet, whichever was less.
- Expanded the situations in which accessory structures were permitted with a reduced setback of 3 feet to include the following conditions:
 - Separated from other buildings by 5 feet or more.
 - Set back at least 60 feet from a public street.
 - May not exceed 1 story in height or 450 square feet in size.

There were no revisions to the zoning ordinance until its repeal and replacement in 1975.

3. 1975 Zoning Ordinance

The 1975 zoning ordinance repealed and replaced the 1968 zoning ordinance. It was adopted in response to the 1975 Oregon Supreme Court case *Baker v. City of Milwaukie*, which determined that the local comprehensive plan was the controlling land use document, and land use zoning and regulations must be consistent with it. In May of 1975, City Council adopted an interim ordinance which applied a moratorium on development in areas where a potential conflict existed between the Comp Plan and Zoning Ordinance maps.¹⁸ The 1975 ordinance was adopted 3 months later.

Changes to the residential provisions were minimal. Generally, allowed uses within transitional areas were more clearly described (i.e. “offices of doctors and dentists” rather than “offices”), and buffer area review was expanded to include the A-3 zone.

Provisions to allow accessory structures with a 3-foot setback were retained, and additional restrictions were added:

- Increased the required building separation to 6 feet.
- Increased the allowable size to 480 square feet.

¹⁸ Ordinance 1311, adopted May 19, 1975.

4. 1977 Amendments

The 1977 zoning ordinance revision retained most of the 1975 provisions regarding residential uses and standards, and established new provisions in all residential zones for:

- Minimum vegetation requirements.

5. 1979 Zoning Ordinance—the current version

The next, and final, complete revision of the zoning ordinance occurred in 1979.¹⁹ The ordinance was adopted concurrently with the 1979 Comprehensive Plan,²⁰ which had been revised and adopted to comply with the 1973 Statewide Planning Goals. The City's first subdivision ordinance, including flag lot design and development regulations, was adopted a month later.²¹

Generally, the revisions contained in the ordinance focused on increased housing densities through the permitting of more single family attached dwellings and the introduction of the town house as a new multifamily housing type. The ordinance retained the existing single family residential zones R-10, R-7, and R-5, renamed 3 existing zones, and introduced 2 new zones:

- Residential Zone R-3 (formerly A-3 zone)
- Residential Zone R-2 (formerly A-2 zone)
- Residential Zone R-1-B (formerly A-1-B)
- Residential Zone R-1: Permitted all residential types; conditionally permitted various civic, office and commercial uses.
- Residential-Office-Commercial Zone R-O-C: Permitted residential, commercial, and office uses. Provided some flexibility in lot size.

The 1979 Comp Plan and zoning ordinance made the following revisions to increase residential density:

- Established the “moderate density” land use designation (in addition to low density, medium density, and high density) and assigned the R-3 zone to that density.
- Expanded the definition of single-family attached dwellings to include both duplexes and triplexes.
- Expanded the definition of multifamily dwellings to include 4 or more units (previously 3 or more units).
- Added 2 new definitions:
 - o “Dwelling, Townhouse:” 4 or more houses, usually 2 story and each occupied by 1 family, sharing common structural walls. Each dwelling and lot was under single ownership (i.e. fee simple) or lots were under joint ownership.
 - o “Dwelling, interior single family attached, interior townhouse,

¹⁹ Ordinance 1438, adopted November 5, 1979.

²⁰ Ordinance 1437, adopted November 5, 1979.

²¹ Ordinance 1440, adopted December 3, 1979.

interior multifamily condominium:" the dwelling unit or units that were interior to the whole residential structure and did not include the dwelling units that were on the ends of the structure facing the lot lines.

- Added additional building height provisions in exchange for additional vegetation in multifamily residential zones.
- Added provisions for additional density in exchange for dedication of parkland or below average unit prices (i.e. affordable housing units) in a housing development.
- Revised the 1968 transitional area standards and buffer review to remove outright permitted transitional uses and require Type III transition area review (TAR) for townhouse, multifamily, commercial, or industrial projects were proposed within 100 ft of areas designated for lower density. The TAR replaced buffer review in the development standards of the R-3, R-2, R-1, R-1-B, and R-O-C zones.

The 1979 subdivision ordinance adopted flag lot development standards, including:

- Required access strip of at least 20 feet.
- If 2 flag lots had abutting access strips, the combined required width was 30 feet.
- Development of 3 or 4 flag lots permitted with Planning Commission variance review.
- Required lot sizes equal to the base zone standards, exclusive of the "pole" and paved turnaround area.

A 1980 amendment adopted the following revisions to eliminate inconsistencies between the Comp Plan text and zoning map:²²

- Duplex uses were added as outright permitted use in the R-5 zone. The Comp Plan identified the R-5 zone as a moderate-density residential zone, which was to be composed primarily of single family detached and attached dwellings.
- Multifamily dwellings were added as Conditional Uses in the R-3 zone. The Comp Plan identified the R-3 zone as a medium-density residential zone, and directed multifamily units to be allowed based on location criteria.

III. MAJOR RESIDENTIAL POLICY CHANGES TO THE CURRENT ZONING ORDINANCE

A. Overview

The current zoning ordinance has been revised multiple times since its adoption in 1979, primarily to remain compliant with federal, state and Metro Functional Plan policies. The 9 existing residential use zones are those the City adopted in 1968, 1979 and 1984; the residential development standards are substantially similar to those adopted in 1968; and the residential use standards are substantially similar to those adopted in 1979.

Significant changes to the zoning ordinance since 1979 include:

²² Ordinance 1447, adopted February 3, 1980.

1. 1984: Adoption of Accessory Dwelling Unit (ADU) provisions.²³
2. 1984: Adoption of the R-2.5 zone.²⁴
3. 1994: Adoption of Chapter 19.1400 (street improvement regulations).²⁵
4. 1994: Revised dwelling type definitions.²⁶
5. 2002: Revisions to flag lot design standards.²⁷
6. 2002: Adoption of accessory structure development and design standards.²⁷
7. 2002: Adoption of single family residential design standards.²⁷

Each of these changes is described in detail below.

1. Accessory Dwelling Units (ADUs)

Provisions for ADUs were adopted in 1984 to allow people to better utilize their property through conversion of existing space. According to the staff report and City Council worksession minutes, the provisions were in response to a number of requests from elderly residents to convert portions of existing houses or accessory buildings to secondary dwellings. Another likely reason was the requirement to comply with Statewide Planning Goal 10 – Housing.

The Planning Commission supported restrictions on unit size and visibility, and recommended approval of both detached and attached ADUs with a maximum size of 800 sf. The City Council removed the provision for detached ADUs due to concerns about Comprehensive Plan compliance and density. Attached ADUs were adopted as a conditional use in all zones that permitted single family residential uses outright.

The 1984 ADU provisions remained in effect until 1999, when the City adopted amendments to comply with Metro Functional Plan Title 1 Housing and Employment Accommodation.²⁸ These amendments revised the ADU standards and levels of review as follows:

- Established 2 types of ADUs: Type 1 and Type 2. Type 1 ADUs are limited to 600 sf in area and 40 percent of the gross floor area of the primary structure; Type 2 ADUs are limited to 800 sf in area and 50 percent of the gross floor area of the primary structure.
- Amended the ADU provisions to allow Type 1 ADUs in all zones that permitted single family detached dwellings through a staff level review process. Required Type 2 ADUs to obtain conditional use approval from the Planning Commission.

2. Residential Zone R-2.5

The Residential Zone R-2.5 was also established in 1984. Its intent was to allow smaller lots sizes than the existing minimum of 3,000 sf; attached zero lot line town houses were allowed on 2,500 sf lots. These smaller lot sizes were intended to

²³ Ordinance 1561, adopted May 3, 1984 (File #ZA-84-01).

²⁴ Ordinance 1569, adopted October 16, 1984 (File #ZA-84-04).

²⁵ Ordinance 1762, adopted May 17, 1994 (File #ZA-94-02A).

²⁶ Ordinance 1773, adopted October 18, 1994 (File #ZA-94-06).

²⁷ Ordinance 1907, adopted August 20, 2002 (File #ZA-02-02).

²⁸ Ordinance 1854, adopted April 6, 1999 (File #ZA-98-02-A).

encourage affordable housing and respond to the fact that many lots in the City had been platted at 2,500 sf.

The R-2.5 zone allowed a variety of housing types and provided a second moderate-density residential zone (along with the existing R-3 zone). The zone was to be applied at the request of individual property owners, which may explain its application to only 2 properties in the City to date.

3. Street Improvement Regulations

Chapter 19.1400 was adopted in 1994 to comply with OAR 660-12-055 and 660-12-045, which established standards for pedestrian, bicycle, and transit opportunities in new developments or redevelopment of property. This chapter established requirements for street improvements to mitigate the transportation impacts of new development and required applicants to submit an additional land use application, which the City used to evaluate and condition development projects that triggered the requirements of the new chapter.²⁹

Street improvement regulations can have a significant impact on new residential development proposals in the City; current regulations are triggered by partitions, subdivisions, replats, new construction, and modification or expansion of an existing structure. The required street and sidewalk improvements include:

- Expansions of less than 200 square feet: None.
- Expansions between 200 and 1499 square feet: Right-of-way dedication if needed.
- Expansions of more than 1500 square feet (including construction or establishment of a new dwelling unit): Half-street improvement, including pavement, gutters, curbs, planting strip, and sidewalk.

Because much of Milwaukie's street network is incomplete, most new development is required to construct street and sidewalk improvements at the time of construction.

4. Revised Dwelling Type Definitions

The dwelling unit definition update adopted in 1994 revised the City's definitions in order to comply with the universal building code (UBC) and the Council of American Building Officials (CABO) definitions. The ordinance implemented the following revisions:

- Removed definitions of town house and interior town house and removed town houses from the list of permitted uses in zones allowing residential uses. There were no revisions to site development standards.
- Revised the multifamily residential dwelling definition from a structure containing 4 or more dwelling units to a structure containing 3 or more dwelling units.
- Revised the single family attached dwelling definition from a structure containing 3 dwelling units (triplex) to a structure containing 2 dwelling units (duplex).

According to staff reports and Planning Commission discussion minutes, the assumption guiding the removal of the "town house" definition was that without the ownership component, townhouses would be automatically included in the

²⁹ Changed to Transportation Facilities Review in 2009.

multifamily dwelling definition if they included 3 or more units.³⁰

Previously, attached zero lot line dwellings on fee simple lots were permitted in many residential zones. With the deletion of the “townhouse” definition, it became unclear whether and where provisions regarding interior single family attached and condominium units are applicable. Current multifamily dwelling definitions specify that dwelling units are contained within a single structure; questions about whether zero lot line developments such as townhouses should be permitted remain unresolved, so the City has effectively not allowed townhouses to be constructed outside of downtown.

5. Flag Lot Design Standards

The City adopted its current flag lot design standards in 2002, but they represent a culmination of more than 20 years of revisions. The current development and design standards include:

- Minimum accessway width of 25 feet.
- Front and rear yard setbacks of 30 feet, side yard setbacks of 10 feet regardless of zone.
- No more than 2 flag lots may be created in any partition.
- Landscaping requirements include a perimeter planting requirement and accessway buffer/planting standards.
- The lot area included in the accessway (or “pole”) is excluded from being counted in minimum lot area.
- Flag lots are prohibited in subdivisions.

Flag lot design standards were established in 1979 with the adoption of the City’s first subdivision ordinance. The standards remained unchanged until 1994, when an amendment adopted the following changes:³¹

- Reduced the minimum access strip width from 20 feet to 15 feet.
- Reduced the combined required driveway width from 30 feet to 20 feet in the case of abutting access strips.

Soon afterwards, a 1995 amendment changed the flag lot dimensional standards to allow:

- Inclusion of the “flag pole” portion of the lot and the required turnarounds in calculations of the minimum area of a buildable lot.³²

According to the staff report, this was in response to a large number of variance requests due to property owner difficulty meeting minimum lot size requirements while excluding the access strips and paved turnarounds in the calculation.

In 1998, City Council adopted amendments intended to “address inconsistencies between the City’s development ordinances and the neighborhood visions for acceptable infill development,” specifically the large number of administrative variances that had been granted for flag lot size reductions and development standards. The amendment adopted the following changes:

³⁰ Planning Commission staff report for September 23, 1994, work session.

³¹ Ordinance 1769, adopted July 19, 1994 (File #ZA-94-05).

³² Ordinance 1775, adopted February 7, 1995 (File #ZA-94-07).

- Adopted new definition for “flag lot” that included both the “flag” and the “pole.”
- Adopted landscape screening and buffering provisions along the “pole.”
- Required lot sizes equal to the zoning standards exclusive of the “pole” (reversing the 1995 provision).
- Increased the minimum access strip width from 15 feet to 20 feet (reversing the 1994 provision).

The flag lot development and design standards remained unchanged until 2002, when the current subdivision ordinance repealed and replaced the 1979 ordinance. The key changes adopted in 2002 were:

- Increased minimum accessway width from 20 feet to 25 feet.
- Increased front and rear setbacks beyond those required in the underlying zone.
- Reduced the number of flag lots allowed in any partition.
- Added landscaping buffering requirements along the pole.
- Prohibited flag lots in subdivisions.

The flag lot design and development standards have not been amended since 2002.

6. Accessory Structure Standards

Accessory structure standards were established with the 1946 zoning ordinance, which allowed accessory structures with very few restrictions. The 1968 zoning ordinance increased the maximum height of all structures, including accessory structures.

Between 1968 and 2002, accessory structures were allowed to have a maximum height of 2.5 stories or 35 feet tall, and could be built with reduced setbacks as long as they were set back from the street 60 feet or more. There were no limits to the square footage of an accessory structure; its height in comparison to the size of the primary dwelling; or the siding or roofing materials of an accessory structure. These regulations resulted in a number of very large, accessory structures that were perceived to be incompatible with surrounding houses.

Accessory structure standards remained unchanged until 2002, when the current accessory structure design standards were adopted:

- 500 square foot maximum area for lots less than 10,000 square feet, and an 850 square foot maximum area for lots greater than 10,000 square feet.
- No metal siding on structures greater than 120 square feet.
- Accessory structures greater than 120 square feet required exterior building materials similar to residential structures.
- Maximum height of 15 feet.
- Prohibition against flat roof for structures with an interior height greater than 9 feet.
- For accessory structures with other than a flat or shed roof (i.e. with an interior height greater than 9 feet), the minimum roof pitch is 4:12.

In addition, the amendments:

- Removed the allowance for reduced setback provisions for certain accessory structures.
- Prohibited accessory structures located within the required front yard, with the exception of fences, pergolas, arbors, or trellises.
- Allowed the existence of multiple accessory structures, subject to the building separation, lot coverage, and minimum vegetation requirements of the underlying zone.

The Planning Commission and City Council were very supportive of accessory structure regulations. Public testimony focused primarily on the flag lot design standards included in the zoning ordinance.

7. Residential Standards

i. Single Family Residential Design Standards

The City's first single family residential design standards were adopted in 2002 in response to concerns about increased flag lot development and infill construction. These standards regulate main entrance orientation, street-facing windows, and require at least 3 of 12 building elevation features such as bay windows, recessed entry, porches, roof eaves, and certain exterior building materials. The current design standards do not apply to new additions or renovations of single family homes, and do not require consideration of the height and mass of adjacent development. They do not regulate the placement or design of garages, but give preference for including attached garages (which qualify as one of the 12 required building elevation features).

The design standards apply in addition to the site development standards contained in the individual use zone sections of Chapter 19.300.

ii. Compatibility Standards for Residential Infill and Redevelopment

Generally, the City's Code has focused primarily on permitted uses and site development standards, rather than building design or compatibility. However, there have been some exceptions to this rule.

A 1966 emergency ordinance added a provision to allow two-family dwellings in the 3-R-1 Zone with requirements that new buildings "conform with, harmonize with, and/or complement by design, appearance, and standards of maintenance, the abutting properties and general areas."³³ This is the first mention of concerns about compatibility with existing development.

The 1968 zoning ordinance established several compatibility-oriented provisions: the Design Zone D; transitional areas; and buffer areas.

- The Design Zone D was an overlay zone that provided for the establishment of design districts, within which development would require Planning Commission review for compatibility and site design.
- A transitional area was defined as an area within a residential zone, abutting a commercial or industrial zone, and extending not more than 100 ft into the residential zone. Transitional uses, such as duplexes and offices, were permitted outright in transitional areas.

³³ Ordinance 1131, adopted October 24, 1966.

- Buffer area review applied to high-density residential, commercial, and industrial development within 100 ft of lower-density residential or commercial uses and required review by the Planning Commission. These buffer area requirements included additional setbacks, landscaping, or other screening as found appropriate by the Planning Commission.

The D zone was introduced in 1968 and remained in the zoning ordinance until 1991; however, it was never applied to any properties in the City because no design districts were ever established. In response to increased development in the City, an emergency interim site design review ordinance was adopted in 1975, and required Planning Director or Planning Commission review of any new commercial, industrial, or multifamily construction within the City. The approval criteria included evaluation of site planning, architectural design, and compatibility of new and existing development.³⁴

In order to implement this ordinance, a Design Review Board (DRB) and Design Review guidelines were established in 1976.³⁵ The DRB was short-lived; it was dissolved and the enabling ordinance repealed in 1978 due to the failure of the City's budget measure on the ballot.³⁶ The D zone was eliminated as part of a reformatting of the code in 1991.³⁷

In 1979, the transitional area and buffer area review were combined into Transition Area Review (TAR), which remains in effect today.

iii. Multifamily Design Standards

Since the repeal of the 1975 site design review ordinance, the Code has not included multifamily design standards or guidelines. The current design standards do not apply to multifamily housing developments. In rare cases, multifamily developments are subject to TAR, the minor quasi-judicial review process established by the 1979 zoning ordinance. TAR applies to development in situations where multifamily, commercial, or industrial projects are proposed for construction within 100 ft of low density residential areas. The TAR process considers density, screening, and building separation, but is a weak tool that doesn't address site or building design and applies only when the proposed development is located in a zone adjacent to a lower-density residential zone.

IV. SUMMARY OF ALLOWED HOUSING TYPES

A. Overview

The City's zoning ordinance allows the following housing types:

- Single family detached dwelling
- Single family attached dwelling, which is two dwelling units sharing a common wall on the same lot (duplex)
- Multifamily, which is either a condominium or apartment structure with 3 or more units on the same lot

³⁴ Ordinance 1326, adopted October 20, 1975.

³⁵ Ordinance 1344, adopted August 16, 1976.

³⁶ Ordinance 1397, adopted July 6, 1978.

³⁷ Ordinance 1712, adopted October 15, 1991 (File #ZA-91-02).

- Type 1 and 2 ADUs, which are considered incidental and subordinate to a detached single-family dwelling

Each allowed housing type is described in detail below.

1. Single Family Detached

Single family detached (SFR) dwellings are permitted outright in all residential zones.

2. Single Family Attached (Duplex)

Single family attached dwellings are defined as 2 dwelling units, each occupied as a housekeeping unit, sharing structural walls (i.e. a duplex). Duplexes are permitted in the R-10 and R-7 zones as conditional uses, and permitted outright in the remaining residential zones. Duplex uses were added as an outright permitted use in the R-5 zone in 1980 in order to eliminate inconsistencies between the Comp Plan text and map. The Comp Plan identified the R-5 zone as a moderate-density residential zone, which was to be composed primarily of single family detached and attached dwellings.

3. Multifamily

Multifamily dwellings (MFR) are permitted outright in high density residential districts, and as conditional uses in medium density districts. Although the definition of MFR was intended to include town house development, town homes are not listed as permitted uses in any residential zones.

Multifamily dwellings were added as a conditional use in the R-3 zone in 1980 in order to eliminate inconsistencies between the Comp Plan text and map. The Comp Plan identified the R-3 zone as a medium-density residential zone, which was to be composed primarily of single family attached and townhouse units, with multifamily units to be allowed based on location criteria as specified in the zoning ordinance.

4. Type 1 and Type 2 Accessory Dwelling Units

Accessory dwelling units (ADUs) are divided into Type 1 ADUs, which require Type II review, and Type 2 ADUs, which are a Conditional Use and require Type III review. The ADU must be part of or attached to the main structure, and current residential standards do not permit the construction of detached ADUs (for example, above a detached garage). Type 1 ADUs are permitted in all residential zones; Type 2 ADUs are permitted as Conditional Uses in the R-2, R-3, R-5, R-7, and R-10 zones.

Accessory dwelling units have been permitted in the city since 1984. A 1999 amendment established 2 types of ADUs with different review types: Type 1 ADU and Type 2 ADU.

A Type 1 ADU is an ADU of not less than 225 sf or more than 600 sf, and not more than 40 percent of the gross area of the primary dwelling. A Type 2 ADU is an ADU of not less than 250 sf or more than 800 sf, and not more than 50 percent of the existing structure. Both types of ADUs require City review and approval. There are some minimal design standards specific to ADUs, including restrictions on the location of entrances and fire escapes.

Table 2 provides an overview of permitted housing types in residential zones.

Table 2. Permitted Housing Types in Residential Zones

Zone	Permitted	Conditional Uses	Not Permitted
Residential-Business Office-Commercial Zone R-1-B Residential-Office-Commercial Zone R-O-C Residential Zone R-1	Single Family Detached (SFR) Single Family Attached (Duplex) Multifamily Residential (MFR) Type 1 ADU	None	None
Residential Zone R-2	SFR Duplex MFR Type 1 ADU	Type 2 ADU	None
Residential Zone R-2.5	SFR Duplex Type 1 ADU	MFR	None
Residential Zone R-3	SFR Duplex Type 1 ADU	MFR Type 2 ADU	None
Residential Zone R-5	SFR Duplex Type 1 ADU	Type 2 ADU	MFR
Residential Zone R-7 Residential Zone R-10	SFR Type 1 ADU	Duplex Type 2 ADU	MFR

V. CODE ASSESSMENT

A. Evaluation

The August 2009 Final Report: City of Milwaukie Code Assessment prepared by Angelo Planning Group (APG) identified a number of issues with the City's existing residential standards.

1. Residential Design Standards

- The location of garages is not currently regulated in Milwaukie's code and can result in "snout house" development in which the garage dominates the street-facing elevation, both in bulk and in proximity.
- Staff has indicated that developers frequently choose not to provide roof eaves (which are one of the optional design features in Milwaukie's existing design standards) because the current definition of lot coverage requires that eaves be counted towards the maximum lot coverage standard. In order to maximize lot coverage, developers choose to omit roof eaves, which results in development that is typically considered less aesthetic and not visually compatible with surrounding homes.
- The existing lot coverage standards for the lower density residential zones (R-10, R-7, and R-5) may be overly restrictive in terms of allowable building footprint. In order to maximize building square footage within a small building footprint, builders may be compelled to construct taller buildings that may be out of character with surrounding development.
- Currently, the residential design standards only apply to new single family

development and not to exterior remodels or expansions of existing homes or to multifamily development.

2. Residential Infill Standards

The City's existing transition area (TAR) provisions do not address compatibility between existing residential development and new infill or remodel development within the same zone. Under the current code, developers tend to maximize the allowable building envelope which can result in new infill structures that do not "fit in" with surrounding development in terms of both bulk and design.

3. Multifamily Design Standards

Multifamily development is permitted as a conditional use in the R-3 and R-2.5 zones and as an outright permitted use in the R-2, R-1, R-1-B, and R-O-C zones. Multifamily developments tend to have larger building sizes, different architectural styles, taller building heights, different site layouts, and more parking when compared to single family or duplex developments. As such, new multifamily development located in an established single family neighborhood can be inconsistent with its surroundings in terms of bulk and aesthetics.

The transition area provisions mentioned above only apply when the multifamily development is in a different, adjacent zone; therefore, they are not effective at regulating compatibility between developments in the same zone, specifically the R-2 zone, the majority of which is developed at single-family residential densities.

4. Housing Type and ADU Standards

- In the lower density zones (R-10, R-7, and R-5), the required lot sizes for duplex dwellings are excessive and may make duplex development infeasible. For example, in the R-7 zone, the minimum required lot size for a single-family detached home is 7,000 square feet. For a duplex, the lot size must be an average of at least 7,000 square feet per unit. This requires a fairly large lot for duplex development. Also, even if lot size is met, duplexes require conditional use approval in the R-7 and R-10 zones.
- Outside of the downtown zones, there are no provisions for attached, zero lot line houses (town homes or row houses). This type of housing is not defined in the definitions section of the code, and is not addressed in any of the residential use lists in Chapter 19.300.
- Type 1 ADUs are not listed as permitted uses in the residential use zones. The language in Section 19.404 states that they are permitted in all residential zones, subject to the standards contained in that section, but the use zones do not reference this section so it is not immediately clear that these types of ADUs are, in fact, outright allowed.
- Type 1 ADUs are permitted through a Type II Administrative Review, which requires public notice with the option of a public hearing if requested. This may be an excessive amount of review and act as a deterrent for home owners who may otherwise like to construct an ADU on their property.
- Type 2 ADUs are permitted as a conditional use in all residential zones except the R-2.5, R-1, and the mixed-use zones (R-1-B and R-O-C). It is unclear if Type 2 ADUs were intentionally left out of these zones, or if this was done in error.
- Requiring conditional use approval for a Type 2 ADU may act as a disincentive

for property owners due to cost, time needed for review, and the ability of the Planning Commission to impose additional conditions on the ADU.

- The language in Section 19.602.10, which contains standards for Type 2 ADUs, states that they are “allowed in conjunction with a detached single-family dwelling by conversion of existing space, or by means of an addition”. This implies that Type 2 ADUs must be attached to a single family dwelling, rather than be a stand-alone structure. Again, this may serve as a disincentive to property owners who would like to build an ADU that is not attached to the primary residence (like above a detached garage).



To: Katie Mangle, Planning Director
Susan Shanks, Senior Planner

From: Li Alligood, Assistant Planner

Date: October 22, 2010

Subject: Residential Design Standards – Review of Comprehensive Plan Policies

POLICY REVIEW

The purpose of this memo is to provide an overview of Comprehensive Plan policies related to the adoption and implementation of residential design standards. Relevant Comprehensive Plan policies are found in Chapter 4 – Land Use, which addresses specific issues of balancing land uses within the City. There are two relevant elements in Chapter 4: the Residential Land Use and Housing Element and the Neighborhood Element.

Residential land use policy in the Comprehensive Plan is based on the concept that the City is, and will continue to be, composed primarily of single family neighborhoods. The Comprehensive Plan also anticipated that most of the future development in the City would be single family and multifamily residential infill development.

Residential Land Use and Housing Element

The goal of the Residential Land Use and Housing Element is to provide direction for the maintenance of existing housing, the rehabilitation of older housing, and the development of new housing within existing residential neighborhoods. The Comprehensive Plan assumes that much of the future residential development in the city will be multifamily housing, and the policies in this element reflect that assumption by identifying appropriate locations for multifamily housing, as well as appropriate compatibility measures.

This element contains 3 relevant objectives:

Objective #2 – Residential Land Use: Density and Location

Policies to guide the location of higher density residential uses to minimize impact on established single family neighborhoods:

- Higher density housing types should be concentrated to support public transit and commercial services, and lessen impacts on existing single family neighborhoods.

- Encourages a range of housing types in all areas of the City, as long as new development fits the character of existing neighborhoods.
- Describes criteria for designation of areas as Low Density, Moderate Density, Medium Density, High Density, and Town Center Areas. The criteria relate primarily to the type and density of permitted residential development, as well as stated preferences for the types of development to occur (i.e. rehabilitation of existing residences or clearance and redevelopment).

Objective #3 – Residential Land Use: Design

Policies to minimize the impact of new construction on existing neighborhoods:

- Requires transition measures between new multifamily housing projects within 100 feet of Low and Moderate Density areas.

Objective #4 – Neighborhood Conservation

Policies designed to preserve, enhance, and reinforce the identity and pride of established neighborhoods; encourages compatible new development:

- Encourages residential infill that maintains existing heights, setbacks, yard areas and building mass.
- New construction in Low Density areas should maintain a single family building build, scale, and height when abutting existing single family areas.
- Suggests a Design Review function to interpret and enforce the policies of this element.

Although each objective has a specific focus, the policies contained in this element generally support the protection of the character of existing single family neighborhoods; encouraging a range of housing types; and adoption of City-wide design standards to ensure high-quality, compatible infill design.

Neighborhood Element

The goal of the Neighborhood Element is to support the stability and diversity of the City's neighborhoods. This element identifies neighborhood areas¹, each with a specific character to be preserved and reinforced. This element contains 2 relevant objectives:

Objective #1 – Neighborhood Character

Policies to maintain the residential character of existing neighborhoods:

- New residential development should be consistent in type, style, and density with the existing neighborhood.
- Buffers should be provided between different residential types.

Objective #2 – Neighborhood Needs

Policies to meet the needs of neighborhood areas through identification of the character of each of the neighborhood areas; generally:

- Identifies the preferred location, aesthetics, buffering, and design review process for new multifamily housing.
- Requests higher design standards for new infill housing, as well as multifamily housing and commercial facilities.

¹ The Comprehensive Plan identifies 5 “Neighborhood Areas.”

This element reflects neighborhood concerns about infill development and provides suggestions for methods to encourage or require compatible construction.

SUMMARY

Current Comprehensive Plan policies strongly support City-wide design standards for single family and multifamily residential development; ensuring development compatible with existing single family neighborhoods; and provision of a variety of housing types to meet the needs of residents.

The policies focus on the protection of the character of existing neighborhoods while providing attractive, quality housing for existing and new residents of the City by ensuring compatibility of design, scale, and massing of new development.

Although design standards have been adopted for development in the Downtown Zones and for new single family residential construction, there are currently no design standards for multifamily housing or standards guiding the compatibility of infill development. At this time, most Comprehensive Plan policies relating to compatibility and design have not yet been implemented.



To: Katie Mangle, Planning Director
Susan Shanks, Senior Planner
From: Li Alligood, Assistant Planner
Date: November 17, 2010
Subject: Residential Development and Design Standards – Code Summary

OVERVIEW

This memo provides a summary of current design and development standards in the City's residential zones (excluding the Downtown Residential Zone DR) through a review of development and site standards, housing types, and design standards.

Generally, the City's residential development standards apply to all residential development in the City. The current design standards apply only to new single family residential construction, and do not apply to garage placement or design or substantial renovation or additions.

A variety of housing types are permitted in high-density and moderate-density zones; however, the majority of the City is zoned Residential Zone R-7, which permits only single family detached housing outright. Attached Accessory Dwelling Units (ADUs) of less than 600 sf and 40 percent of the building area are permitted in all residential zones.

Development and Site Standards

There are 9 residential zones within the City, including high-density (R-1), medium density (R-2.5 and R-3), moderate density (R-5), and low-density residential (R-7 and R-10), and two mixed-use zones (R-1-B and R-O-C).

The City's base zone development standards apply to all new residential development in the City. Those standards identify requirements for:

- Minimum lot size, setbacks, street frontage requirements,¹ and vegetation.
- Maximum building height and lot coverage.
- Minimum and maximum density.²
- Off-street parking.³
- Street and utility improvements.⁴
- Building separation of 6 ft between a dwelling and other buildings on the lot.

¹ Every lot shall abut a public street for at least 35 ft; lots for interior single-family attached and condominium unit shall abut a public street for at least 20 ft.

² Minimum and maximum density requirements are triggered by subdivision, planned development, mixed use development, and other Type III applications and are not addressed in this summary.

³ Subject to the requirements of MMC Chapter 19.500 Off-Street Parking and Loading.

⁴ Subject to the requirements of MMC Chapter 19.1400 Public Facility Improvements.

Flag lots in all zones are subject to additional lot design and development standards, including additional front and rear yard setbacks, access considerations, screening requirements, and landscaping.

Table 1 provides an overview of current residential development standards. Corner lots in residential zones are subject to additional side yard setbacks.

Table 1. Residential Development Standards

Zone	Min. lot size	Max. Height ⁵	Max. Lot coverage	Min. Lot Dimensions	Min. Setbacks
Residential-Business Office-Commercial Zone R-1-B	5,000 sf for 1 du; 1,400 sf per du over 1	3 stories or 45'	50%	50' width; no min. depth 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential-Office-Commercial Zone R-O-C	5,000 sf for 1 du; 1,400 sf per du over 1	3 stories or 45'	50%	50' x 80' 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential Zone R-1	5,000 sf for 1 du; 1,400 sf per du over 1	3 stories or 45'	45%	50' x 80' 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential Zone R-2	5,000 sf for 1 du; 2,500 per du over 1	3 stories or 45'	45%	50' x 80' 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential Zone R-2.5	3,000 sf for 1 du; 2,500 sf for attached du	35'	40%	SFR: 40' x 75' Attached: 25' x 75'	15 ft front, 5 ft side (15 ft corner)
Residential Zone R-3	5,000 sf for 1 unit; 3,000 sf attached du	2.5 stories or 35'	40%	50' x 80' 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential Zone R-5	5,000 sf per du	2.5 stories or 35'	35%	50' x 80' 30' width for interior attached	20 ft front, 5 ft side (15 ft corner), 20 ft rear
Residential Zone R-7	7,000 sf per du	2.5 stories or 35'	30%	60' x 80' 30' width for interior attached	20 ft front, 5 ft/10 ft side (20 ft corner), 20 ft rear
Residential Zone R-10	10,000 sf per du	2.5 stories or 35'	30%	70' x 100' 30' width for interior attached	20 ft front, 10 ft side (20 ft corner), 20 ft rear

Some lot size, front yard, building height, and density exceptions apply in all zones.⁶

- No dwelling can be built on a lot with an area of less than 3,000 square feet, regardless of the zone (an exception is the R-2.5 zone, where attached dwellings require only 2,500 square feet).

⁵ Building height is measured from the adjoining street centerline grade to the mean height level between the eaves and ridge for a gable, hip, or gambrel roof.

⁶ MMC Subsection 19.401 General Exceptions.

- Only 1 building designed for dwelling purposes is permitted per lot in the R-10, R-7, R-5, and R-3 zones.
- Buildings sited along certain major streets are subject to additional front yard setbacks.
- Required front yards can be reduced if the adjacent yards are less than the minimum setback.
- In high-density residential zones, one additional story may be permitted in excess of the required minimum standard in exchange for additional vegetation.
- Additional density may be permitted for dedication of parkland or below average unit prices (i.e. affordable housing units) in a housing development.

Housing Types

The City's zoning ordinance permits single family detached, single family attached (duplex), and multifamily housing types. Generally, all housing types are permitted within the high-density residential zones (R-1-B, R-O-C, R-1, and R-2); single family detached and attached housing is permitted outright within the medium-density residential zones (R-2, R-2.5, and R-3) and the moderate-density residential zone (R-5); and single family detached housing is permitted outright within the low-density residential zones (R-7 and R-10).

Accessory dwelling units (ADUs) are divided into Type 1 ADUs, which require Type II review, and Type 2 ADUs, which are a Conditional Use and required Type III review. The ADU must be part of the main structure, and current residential standards do not permit the construction of detached ADUs (for example, above a detached garage). Type 1 ADUs are permitted in all residential zones; Type 2 ADUs are permitted as Conditional Uses in the R-2, R-3, R-5, R-7, and R-10 zones.

Table 2 provides an overview of permitted housing types in residential zones⁷.

Table 2. Permitted Housing Types in Residential Zones

Zone	Permitted	Conditional Uses	Not Permitted
Residential-Business Office-Commercial Zone R-1-B Residential-Office-Commercial Zone R-O-C Residential Zone R-1	Single Family Detached (SFR) Single Family Attached (Duplex) Multifamily Residential (MFR) Type 1 ADU	None	None
Residential Zone R-2	SFR Duplex MFR Type 1 ADU	Type 2 ADU	None
Residential Zone R-2.5	SFR Duplex Type 1 ADU	MFR	None
Residential Zone R-3	SFR Duplex Type 1 ADU	MFR Type 2 ADU	None
Residential Zone R-5	SFR Duplex Type 1 ADU	Type 2 ADU	MFR
Residential Zone R-7 Residential Zone R-10	SFR Type 1 ADU	Duplex Type 2 ADU	MFR

Design Standards

⁷ Although the Mixed Use Overlay Zone MU permits attached townhouse and detached ADU development, it is not included in this summary because it is applied only in conjunction with the R-O-C Zone.

New single family residential development is subject to minimal residential design standards⁸. These standards require:

- Orientation of the main entrance toward the street upon which the lot fronts.
- At least 12% of the exterior wall elevations facing the street must be composed of windows.
- All dwellings must include 3 of 12 features on any building elevation that faces the street. These features include roof line and eave treatments; siding and roofing materials; and entry designs.

The current design standards do not apply to multifamily housing developments or substantial remodel or renovation of single family homes, and do not require consideration of the height and mass of adjacent development. They do not regulate the placement or design of garages, but attached garages qualify as one of the 12 required building elevation features.

In rare cases, multifamily developments are subject to Transition Area Review (TAR), a minor quasi-judicial review process which applies to development in situations where multifamily, commercial, or industrial projects will be constructed within 100 ft of low density residential areas.⁹

SUMMARY

Existing design standards apply to new single family construction, but do not apply to multifamily residential development or substantial renovation of single family residences. New development is not required to consider the height and mass of existing development.

Developments are required to meet both development standards and design standards, when applicable:

- Single family detached and attached residential design standards regulate the orientation of the main entrance, percentage of window area on street-facing walls; and require at least 3 of 12 building elevation features.
- Base zone development standards regulate lot size, the location of structures on the lot, building height, lot coverage and vegetation, and minimum and maximum density. All new residential construction must provide off-street parking and is subject to street and utility improvements.
- Residential development standards permit single and multifamily housing types in high and moderate density zones; single family housing types in medium and low density zones; and Type 1 attached ADUs in all residential zones.

⁸ MMC Subsection 19.403.10 Design Standards for Single-Family Dwellings.

⁹ This review type is proposed to be deleted, with the current extra yard requirement kept as a standard.