

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, January 25, 2011
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Nick Harris, Vice Chair
Lisa Batey
Mark Gamba
Chris Wilson (Arrived during the 5.1 staff report)

STAFF PRESENT

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

COMMISSIONERS ABSENT

Scott Churchill

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 November 9, 2010

Commissioner Mark Gamba noted the Commission still had not done the tour with the Public Works Department.

Vice Chair Nick Harris moved to approve the November 9, 2010, Planning Commission minutes as presented. **Commissioner Gamba** seconded the motion, which passed unanimously.

2.2 December 14, 2010

Vice Chair Harris moved to approve the November 9, 2010, Planning Commission minutes as presented. **Commissioner Lisa Batey** seconded the motion, which passed unanimously.

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

5.1 Summary: Land Use and Development Review Tune-Up Code Amendments

Applicant: City of Milwaukie

File: ZA-10-02, CPA-10-03

Staff Person: Susan Shanks

Vice Chair Harris moved to initiate the public hearing on ZA-10-02 and CPA-10-03. **Commissioner Gamba** seconded the motion, which passed unanimously.

Chair Klein called the hearing to order and read the conduct of legislative hearing format into the record. No Commissioners abstained from the hearing.

Katie Mangle, Planning Director, announced that Ryan Marquardt, Associate Planner, was just outside of the Council Chambers with maps and materials and available to answer questions about how the Code amendments might affect one's property.

Susan Shanks, Senior Planner, presented the staff report via PowerPoint, noting most of the Code amendments were to the Milwaukie Municipal Code (MMC) Title 19 Zoning.

- The Planning Commission had held many worksessions and this was the first public hearing on the project. If the Commission recommended adoption of the Code amendments to City Council, it would go onto the Council for a public hearing.
- Some amendments were being proposed to other Code sections to make sure that the proposed changes would be consistent with Title 19. The goal was to streamline and modernize the Code which had suffered from incremental changes over the past 60 years. It was outdated in that it did not reflect current Oregon State land use law or advancements in planning and technology.
- She reviewed the attachments and provided examples of the four types of changes being proposed: organizational changes, major changes to the review procedures chapter, the creation of a new land use application chapter, as well as some changes to the Comprehensive Plan (Comp Plan). The amendments did not address any land use standards, but how applications are processed and the approval criteria against which they are evaluated.
- More project information was available, including a project website that included a project overview, the project's schedule, links to all the draft documents, including the two public drafts, all the draft amendments, materials and meeting minutes, and reviewed the types of changes being made to each Code section. The website also included a project tour link that walked visitors through the project and the main changes to the Code. Copies of that presentation were available in the hallway.
- Staff recommended that the Commission recommend adoption of the proposed findings and amendments to Council with modifications. Two modifications were proposed in the staff report. Since the packets were distributed last week, three additional changes had been proposed based on comments from Commissioners and the public. Colored handouts were distributed to the Commission that noted the additional proposed changes, which she reviewed as follows:
 - Chapter 19.800 Nonconforming Uses and Development (goldenrod) – Add Provision 19.802.2.E to clearly indicate that this chapter does not apply to signs, which are addressed in a different title that applies to signs.
 - Chapter 19.900 Land Use Application (dark tan) – The majority of changes were on Page 2, where 19.902.4 Comprehensive Plan Map Amendments was added. Essentially, if a Comp Plan map amendment was small in nature, a quasi-judicial process was required and ultimately decided by Council. Quasi-judicial processes were subject to specific state law processing requirements and need to be processed within the 120-day clock.
 - The change was that for larger Comp Plan map amendments, the City Attorney would have the ability to determine whether it was legislative in nature and not subject to the clock. Some Comp Plan map amendments should be legislative, because the City was obligated to approve these amendments in the quasi-judicial process if the approval criteria was met, which might not be appropriate for large Comp Plan map changes.

- Chapter 19.1000 Review Procedures (yellow) – Add 19.1001.6.C Notice Requirements, which clarified the consequences if the applicant did not post signage or post signage correctly, such as a delay in the hearing or decision, possibly requiring an extension of the 120-day clock and reposting the sign. Expectations about staff providing notice were also laid out, clarifying that if staff can demonstrate by affidavit that notice was mailed, someone at a meeting claiming not to have received notice would not invalidate the proceedings.
- Chapter 19.1000 (blue) – Amend 19.1003.2.C to state that the applicant may be required to actually submit photographs of temporary onsite story poles when an application is being evaluated against subjective criteria pertaining to height and/or mass. The Commissioners were emailed about the complexity of requiring story poles as part of the process, and not necessarily just photographs of the story poles. Further discussion was expected on this proposal.
- Chapter 19.1000 Review Procedures (green) – Reintroduced the major quasi-judicial process, now called Type IV. Type V reviews would be legislative reviews involving zoning and Comp Plan map changes that required going to Council. Some zone changes would still be Type III and come before the Commission.
 - Staff had believed that review processes could be limited to four procedures, but realized that many types of applications and proposals utilize the major quasi-judicial process. The proposal was not a change per se, but separating and renumbering what had been combined into the legislative process.

Commissioner Wilson arrived during the review of the handouts and was updated by Chair Klein.

Ms. Shanks responded to additional comments and questions from the Commission as follows:

- Community Service Uses (CSUs) and Conditional Uses (CUs) were in the Conditional Uses chapter because they were actually not overlays, which changed the zoning map and applied a zone, either a base zone or overlay zone, to a specific property. CSUs and CUs did not change the underlying zoning of the property but just allowed certain kinds of uses. CSUs are really a type of conditional use. In the base zones, certain uses are allowed outright and certain uses are allowed conditionally, but they just require review. So the process they go through was similar to CSUs, which used to be in the base zones.
- Staff currently posted notice signs for public hearings. The proposal put the onus on the applicant because the recommendation was to also require more and bigger signs. The City would provide the language for the sign, but the applicant would produce the sign and locate it on the site per staff's instructions. The applicant would be required to provide an affidavit stating that the sign was actually posted per the instructions. If discovered the sign was not posted, either for the required length of time or if the affidavit was not received, the proceedings could be delayed.
- This Code project did not make any substantive changes regarding Accessory Dwelling Units (ADUs), which would involve discussing housing typologies, what the community wanted to see as far as attached or detached ADUs, etc. She confirmed this would be the next Code project, the Residential Development Standards project.

Chair Klein noted there was a lot of information and he wanted everyone to understand how often this project had been before the Commission, how long they had been working on this, and what had been done to this point.

- **Ms. Shanks** replied that these Code amendments have been discussed since March of 2010. Since that time, staff had met with the Commission seven times. Three subcommittee meetings were held as well, of which Commissioners Gamba and Batey were a part. Staff

also presented all the Code amendment projects to Council, including this project in particular, on three occasions. Many public meetings were held on the Code amendments and staff has been working closely with the subcommittee members.

Chair Klein called for testimony in favor of, opposed, and neutral to the application.

Dan Dhruva, Clear Channel Outdoor, 715 NE Everett St, Portland, came prepared to give a statement regarding a concern with the proposed amendments, specifically the definition of high impact commercial businesses; however, the revisions in the latest version addressed their concerns. He read a statement, which was entered into the record as Exhibit 6C. He reiterated the latest revisions of the proposed adoptions addressed their concern and thanked staff for the quick turnaround.

Christopher Burkett, 4512 SE Ryan Ct, Milwaukie, stated he had been working with the Planning Department staff on the Natural Resource Overlay project. His main concern was MMC 19.806, the amortization section, which he considered a slippery slope.

- Currently, once a property was approved, one was good to go. An amortization process, even though very specified and limited currently, could open the door for any number of changes down the road and needed to be very carefully considered.
- He liked to live on his property undisturbed without having to worry about what the next year's changes would be to the Code, what the City wanted to do to his property, or what the changes would be to the use of his property.
 - For example, if the amortization process were applied to an existing landscaped garden, down the road, one would be required to plant native species within a certain distance from a stream.
- He stated he was opposed in principle to allowing the amortization process to be integrated into the development review process as a regular option. Currently, if the City wanted to make a change, presumably there was some other way to do so.
- He clarified he was speaking from both a residential and commercial standpoint. He has a commercial building which was non-conforming but permitted; the City's old police station building on Harrison St.
- He confirmed that a commercial use existed on his building and explained that they had gone through a whole process of getting approval. Part of the issue was that the parking area was nonconforming, but it was less nonconforming than the previous use which was the police department, so it was allowed.
 - He was a photographer and the building was not open to the public, but it was still considered commercial.

Ms. Shanks believed his use could actually be conforming if it was in the R-1B zone which allowed businesses like professional offices. She offered to review the matter further with Mr. Burkett.

Chair Klein believed there could be more concerns about that section of the Code.

Mr. Burkett stated it was like the idea of photo radar where first it was introduced to protect children in school zones, and then before long there was a van parked down on McLoughlin Blvd.

Jean Baker, stated she was a 47-year resident of Milwaukie and was a planning process veteran. She had been part of city, county, state and federal planning boards that did everything

from comprehensive plans to the Portland Airport. Her name was on a common document with Milwaukie, Baker V.

- She stated that a lot of work had been done, and some was wonderful. She noted that the Tune-Up project was bigger than the original Comp Plan and Zoning Ordinance combined.
- She was concerned for citizens about the direction this was taking. Much was said about the intent for fairness and citizen involvement; however, the timeline for a citizen to get into it was shortened.
 - Some state regulations allowed 180 days for an applicant and 120 days for the City to get through their material; whereas a regular citizen or neighborhood group could get as little as 5 days. This could get cheated on and it would take a lot of process to prove that was the case.
- The notice posting was wonderful, but it was absurd to give it to the proponent to do. If she was to bet on who would get it done right and on time, she would bet on the City. A proponent might have some concerns about whether it was in their best interest to post. It was much better done in the City's hands and would provide a transparent process. Someone should also be around to keep an eye on the sign.
- The 10- or 14-day notice was silly. The information could not be absorbed in such a short time. Not many people would do it, but for those who were really concerned, more time was needed. A citizen should be given at least as much consideration as DLCD or Metro. A citizen should be given all the material they needed and not just on a loose timeline of 5 to 20 days.
- There were names of documents she had never heard of before. Metro had gotten into the planning process. Measure 56 was an example of one thing the public needed to be brought up to speed on.
- Short notices were an injury to the public interest. The public could not have something thrown at them and be expected to return with something intelligent in a few days, especially if there was going to be a hearing or an appeal where information could not be added. If one was limited in time to evaluate, one was limited in the facts they could find and present.
- The change in who one could appeal to was uncomfortable. Voluntary citizens should be utilized as much as possible. Appeals to citizen boards and citizen councils was reasonable. Neighborhood associations could join in the process.
- The review and appeal process injured the public interest in that it was abbreviated.
- The public notice was a problem. The loss of the newspaper was a great loss, and the newsletter would soon be gone as well. Not everyone had a computer or the Internet. It was difficult to raise citizen interest now.
- Notice of a hearing should not go to a Neighborhood District Association (NDA) with no standards for what to do with it. Nothing required that they take any action, consider it, or let anybody know. There was no process to work with the NDAs. The City would be wise to go out to those organizations, ask how they wanted to work together, and develop a process to make something happen for the community.
 - So much had changed in the culture; it was time to invent a new wheel. Merely saying "we have it, it is fair, we have notice, we intend to get everybody involved" was not good enough. There needed to be a real actual process in place.
- The Comp Plan looked like the ugly little sister in the planning process. .
- The Code should be overhauled once every couple of years, not in little chips. The Comp Plan could not be revised like zoning. This was not a reasonable approach. She could not imagine the City having a legitimate need to put Comp Plan material in the Zoning Ordinance.

- The proposal leans almost entirely on professionals. By taking the Council and Commission out of so much of it, it really hands it over to professional planners who may not work or live in the area.
 - She knows what happens when citizens turn the planning process loose to the extent proposed. She did not want to see the City continue to grow in the number of planners while decreasing in citizen participation. When she first began, there were three planners who always answered the telephone which was completely different than what was currently happening.
- She appreciated the work on the proposal and knew that things needed to be cleaned up and made more workable. At the same time, the direction away from citizen participation and input, and the involvement and assistance of NDAs, was concerning.

Chair Klein stated that staff would provide some direction regarding her concerns. He understood that many of Ms. Baker's questions related to the land use clock.

Ms. Baker said that shortening the notification distance from 400 to 300 ft and the time from 30 days to 20 days did not seem to be a legitimate change. The other changes that were an issue involved the 14, 10, or 5 day notice to put up the sign and a hearing takes place even if a sign was not put up.

- She assured these points were in the proposal. She used to write legislation and she seldom made mistakes. She hoped some single standard would emerge and a real effort made to give citizens time to get things together to be intelligent in public hearings.

Chair Klein asked if the concern was about having public input on this particular document presently before the Commission or future applications coming before the Commission.

Ms. Baker replied the concern was about the language for the proposed changes. If the proposal was adopted as presented, it would block citizens who want to participate. The core value in the proposed changes stated that fairness and participation was one of the goals. How that fairness would be implemented would need to be considered.

- **Ms. Shanks** clarified that the time frame for giving the public or NDAs opportunity to respond was not shortened or reduced from currently in the Code. Staff was only clarifying one inconsistency where one document or section stated to notify people within 10 days of a hearing and another said within 30 days. Staff chose 20 days as most other notices required 20 days. For NDA notices, the proposed Code amendments were written to provide as much time as the clock would probably allow. She offered to review the language with Ms. Baker to ensure against a typo.

Ms. Baker said that perhaps the timeline was not shortened or reduced; it might have always been that way, but it should not have been. The clock would probably allow exactly what DLCD currently allowed. It was reasonable to give the citizens more. If 180 days were given to a developer and 120 days for the City, why not give more days to the citizens; 45 days would be reasonable.

- **Ms. Shanks** replied that the ORS gave certain parameters, especially for quasi-judicial or administrative matters. For legislative matters, it was wide open. More language was being added in the current document requiring the City to broadly advertise all legislative matters, which staff had been doing, while also giving notice to DLCD. She clarified that the City did have working relations with the NDAs.

Ms. Baker replied that “broadly” needed to be defined. She asked why no working mechanism was in the Code project about the City’s relationship with the NDAs.

- **Ms. Shanks** responded there were meant to be procedures in the Comp Plan and Zoning Code, but all sorts of relationships and City practices exist outside of that. For example, an NDA leadership meeting occurred monthly, but that has changed over time. The City had to be careful not to codify things that vary over time, because the requirement could not be met.
- She understood the concern about noticing for legislative amendments, because it was very broad. For all the other administrative, quasi-judicial types of applications, it was very specific, such as how the City communicates with the NDAs. Staff tried to do an annual NDA training about the land use review process. When a referral was done, staff’s contact information was included so they could ask questions.

Ms. Baker replied that was not the same as saying that the City would work with the NDAs and they had to respond.

Commissioner Batey stated as a former chair, it was hard to get people to serve on the neighborhood Land Use Committees (LUCs). Even when staffed, applications that came in were sometimes looked at and sometimes not; sometimes they were commented on, sometimes they were not.

Ms. Shanks explained that on controversial projects, the City actively solicited citizen involvement, but could not force it. Staff over-referred projects when adjacent to other neighborhoods, even referring to the County NDAs.

Chair Klein clarified that *The Pilot* had not been discontinued, nor were there plans to do so. It was taken online for the month of January and its effectiveness was being considered. *The Pilot* was going back into print next month.

Ms. Baker stated that she would be in touch.

The Commission took a brief recess and reconvened at 8:06 p.m.

Chair Klein called for additional comments from staff.

Ms. Shanks appreciated Ms. Baker’s comment that not everyone was on the Internet. Staff recognized this and tried to provide public information in a variety of mediums. The Code did not specify Internet only. She wanted to assure the public and the Commission that staff still wanted to have many ways to reach the public. No proposal was made to change the current City standard to mail paper notices, which is why something was mailed to every property owner in the city about this hearing, as well as the 300-ft to 400-ft notices.

- With regard to amortization, she clarified the proposed Code was specifically written for a very specific kind of defined, nonconforming, high-impact use and was not intended to broadly include any nonconforming use or to amortize uses in general. It was very specific to a very particular kind of use that exists in the city. As discussed in worksession, it was appropriate to have such a tool for those instances where a use was having a negative impact on the community.

Vice Chair Harris said he was curious about the use of the word “amortization” for this section. The heading should be “discontinuation of nonconforming use” and not “amortization,” which was a financial term.

- **Damien Hall, City Attorney**, explained that in financial settings, amortization was a financial term. In planning settings, it was basically discontinuation or phasing out in various jurisdictions across the country. The concept of amortization was usually of a nonconforming use in planning in various codes. Amortization did mean different things in different contexts.
- **Commissioner Gamba** understood that it took into consideration the financial aspects of that use. If one had not yet recouped their investment, it would provide time to do so.

Chair Klein asked staff to outline a scenario of what the actual process would be for an amortization of a high impact nonconforming use.

- **Ms. Shanks** assured it would not be something staff would be able to just go do. Council would need to direct the Planning Director to do an evaluation of nonconforming uses in the city to first identify them. This particular Code amendment did not require identifying what uses were nonconforming in the city, much less which were high impact and nonconforming. The Planning Director would then return to Council at a public meeting to review the list and discuss whether or not items were listed appropriately.
 - There was perhaps a subjective component to the high impact part even though it was defined. Because of the stakes involved, it could be argued whether something was high impact or not.
- Next, the City would inform property owners determined to be high impact, nonconforming uses and have a hearing wherein the City would consider the appropriate amortization period.
 - That period would depend upon the kind of improvements at the site and investments the property owners made into the property. For some uses, the period might be 20 years; for others, 5 years, and would be determined on a case-by-case basis according to those investments and the type of use.
- The amortization schedule would be reviewed at the Commission level at a public hearing where it would be evaluated whether or not the use was appropriately listed on the inventory and whether the amortization period was appropriate.
- A recommendation would then be made to Council, another public hearing would be held, and then Council would adopt the amortization period by ordinance.
- It was a long process that would be very public in many ways with many opportunities for discussion.

Commissioner Batey asked if an inventory was absolutely required or could the Council request the review of a particular property that was a nuisance because of noise or odor, for example.

- **Ms. Shanks** replied that could be done. As drafted, the Council would direct the Planning Director to do the inventory of a particular zone, area, or site. They could be very specific about where they wanted the Planning Director to do the analysis.
- **Mr. Hall** stated that situation would not result in removal of one of the hearings. Even if it was in a very closely prescribed geographic area, or even an inventory of one which Council would have the discretion to do, an inventory would still be put together, albeit a simple one, and then it would still go back for a hearing.

Ms. Shanks noted that staff was still working to make sure all section references were correct and still wordsmithing when grammatical errors were found and modifying for sentence clarity

without changing the actual intent. Commissioner Gamba noted during the break that one additional word needed to be added to a sentence. If anyone wanted to know what was changed word-for-word between the different drafts as opposed to summaries of changes, a compare document could be done, so there could be a record of exactly what was changed.

Commissioner Gamba:

- Suggested that “sustainability” be added to the second paragraph of MMC Section 19.102 Purpose, on 5.1 Page 21 of the packet.
 - **Ms. Shanks** agreed it was appropriate to add “sustainability.” The list was not intended to be all inclusive, but should represent existing policies in the Comp Plan, which did support sustainability in many different ways.
 - **Mr. Hall** confirmed “sustainability” would be added to the last sentence.
- Recommended adding “adversely” to the second sentence of MMC Section 19.905.1 to read, “**adversely** change the character of an area or adversely impact” of 5.1 Page 47.
- Suggested staff consider adding a new condition to MMC Section 19.905.5 Conditions of Approval, 5.1 Page 48 stating, “**L. Require mitigation for the presumed carbon footprint**,” “**calculated carbon footprint**” or something to that effect.

Chair Klein stated a clear measurement was needed for “carbon footprint,” which extended to much more than just the initial use.

Commissioner Gamba suggested saying, “...**for the carbon footprint of the use being conditioned.**”

Chair Klein replied that a carbon footprint was currently hard to quantify.

Commissioner Gamba said it was not something required, but a tool in the City’s box. He agreed with Vice Chair Harris that it could fit under MMC Section 19.905.5 B, but would need to be listed.

Chair Klein:

- Suggested “Require structures and site design features that minimize environmental impact such as those caused by noise, vibration, air pollution, glare, odor, **carbon footprint**, and dust.”
 - **Mr. Hall** recommended using “carbon emissions” instead.
- Noted many studies stated the carbon footprint of a Prius was more than that of a Hummer.

Commissioner Batey liked the idea of amending Item B. Using “carbon footprint” would require a definition and would become a much bigger change.

The Commission consented to add “carbon emissions” to MMC Section 19.905.5 B.

Commissioner Gamba:

- Recommended amending Section 19.1006.3.E Notice Sign, 5.1 Page 76, to state, “...and **legible** to pedestrians walking by the property.”
 - **Ms. Shanks** agreed. The signs were not legible if posted more than 15 ft from the sidewalk, and people would have to trespass on the property to read it. The language would be rewritten so that the notice sign for other review types appears throughout the Code.

- She clarified the proposed Code stated that staff would provide information specifying sign size, minimum language, and font size, as well as the number of signs required. The applicant would then have to provide the affidavit that the instructions were satisfied; otherwise, consequences would result as discussed.
- The affidavit had not yet been developed, but requiring photos would probably be appropriate.

Chair Klein stated that he wanted consistency in the signage. He would not want someone to change the color or alter the sign. Right now, people knew what was going on when they saw the orange signs. He wanted to make sure that staff controlled what the sign looked like and could dictate that the applicant post the sign.

- **Ms. Shanks** agreed. On larger projects, the City might require a really big sign that varied from the standard. In most instances, consistency was key.
- **Ms. Mangle** noted a statement to that effect needed to be added, that staff would design the sign or provide specific design requirements according to City specifications or something similar.
- **Ms. Shanks** stated that right now the City only had instructions for posting. More language could be added that a form would be created that outlined the operating procedure.

Commissioner Gamba agreed with Ms. Baker regarding MMC 19.1009.3 through 19.1009.6, 5.1 Pages 86 and 87. He was curious why there were two kinds of hearings and why new evidence could not be introduced. The average citizen was not a lawyer or developer, and may realize during a hearing that they should have brought certain evidence, but they would not be able to appeal. The timeline was an additional factor. He believed new evidence should be able to be introduced.

Chair Klein reminded that a Commission rule allowed an audience member to request a continuation in order to review the information.

Commissioner Gamba noted that a person could get home and then remember something that should have been brought up.

Ms. Mangle stated this was a great point for discussion because there were many different sides to the issue. This project was trying to streamline the process in meaningful ways and put responsibility on the Commission and Council as appropriate. There was a history of appeals from Commission to Council where essentially everything was treated as a complete do over. Often, new evidence had not resulted in a different decision from Council. In some cases, so much new information was provided at Council that they were essentially reviewing a completely different application than what was presented to the Commission. The intent was not to shut down the process to people who were still trying to find better ways to make their point.

Commissioner Batey noted there were cases in which a continuance was granted when requested, though that did not address someone remembering something when they got home.

Commissioner Gamba stated that until he was a Commissioner, he would not have known that they needed to ask for a continuance.

Commissioner Batey explained that the attorney or staff had advised that continuance was an option, sensing there was more that people had to say. She completely supported limited hearing on appeal.

Commissioner Gamba said he could understand setting limits, but not restricting new evidence from being introduced.

- **Ms. Shanks** asked Mr. Hall to explain the options available regarding limitations on appeals which were built on a tiered effect; others were more extreme.
- **Mr. Hall** stated that currently this unrestricted de novo was the do over. No matter what happened at Commission, any new arguments or new evidence could be presented on appeal to the Council, which caused issues for the City. The Commission may or may not get all the pertinent information. A smart applicant might believe they have a better chance with the people on the Council and take it easy at the Commission.
 - The middle ground was the de novo on the record which meant that on the appeal, new arguments could be made, but the record was basically sealed; no new evidence was allowed. If an applicant did not present all the evidence to the Commission, they were denied the opportunity to bring in new evidence, which was a lot easier for the Council as far as being decision-makers. If applicants came in with new material, pictures, etc., and Council has to review it, which takes a lot time and resources.
 - Another option was on the record, which meant one could only use the arguments made and only use the evidence originally presented at Planning Commission.
- He noted that Commissioners could the applicant if they were struggling and could not see a clear route to approval, such as telling them they could ask for 7 days.

Chair Klein stated that the way it stood currently benefitted the applicant as well as the people being impacted. The applicant must come with everything and had the opportunity to

- Applicants with less than thorough applications before the Commission were told to go back and get more information, and if not, they would be denied. Some hearings had continued for two or three meetings so citizens could also look at the information that came back. This protected the citizens, providing them opportunity to see what was submitted.
- On the other hand, the applicant was trying to get a project approved and completed. They had a right to be able to put something through the system. They ran the risk of not being approved by the Commission if certain things were presented.
- The game could not be changed when it went to Council and circumvent months of process that had occurred. Applicants have appealed applications approved by the Commission to Council.
- Applications must have the information. Once deemed complete, it had to go to the Commission. When it went to Council, only that which was brought up at Commission should be considered.
- If a citizen needed more time and had a question on something, the City had to afford them that opportunity to review it and then return and ask the appropriate questions and be able to get the appropriate facts.

Commissioner Gamba agreed these were great points; however, they needed to consider that the Commission could change. The group 20 years from now might not be helpful or consider that citizens were not lawyers and would not coach the citizens.

Chair Klein noted that other things needed to be taken into consideration, such as the 120-day land use clock to get the application through. At some point, people needed to step forward and start paying attention.

- He agreed that during the process of one hearing, people could learn a lot and then wish they had brought something in. Hopefully the Commission takes their comments seriously

and begins asking questions as well. The Commission could consider that information further and either hold the hearing open or deem it acceptable.

Commissioner Batey asked if the Commission denied something that was being appealed to Council, could the Council remand it back to the Planning Commission.

- **Ms. Mangle** replied that was not specifically addressed in the Code, but it would be an issue with the land use clock. Typically, everything is pushed through with just enough time to allow for an appeal to Council. The applicant would have to waive their rights on the decision to allow for enough time to hold another hearing at the Commission.

Commissioner Gamba clarified he was concerned for both citizens and applicants. He was concerned about other residents or property owners who disagree with a Commission decision not being able to appeal because they did not raise the right issues and would not be able to introduce new evidence. He was also concerned about a homeowner who did not know what needed to be presented to convince the Commission that their request was doing was a good idea, but had learned what needed to be shown through the process.

Chair Klein:

- Cited the conduct of hearing format comments which are read at the beginning of each hearing, adding everything needed to be brought to the table upfront.
 - **Ms. Shanks** clarified that the de novo on the record appeal to Council required a reason for the appeal request. At the appeal, the whole of the record could be considered and argued on any one point, whether or not it was their point.
 - She confirmed new evidence could not be introduced. A neighbor could not show up with new information about a tree removal, for example.
 - **Commissioner Gamba** believed not allowing new evidence made the appeal process completely toothless.
- Asked if an application was appealed to the Land Use Board of Appeals (LUBA), and a neighbor, who did not testify at any of the preceding hearings, did not agree with the project, at that point what would LUBA tell them?
 - **Mr. Hall** explained the neighbor would have no standing at LUBA. Prior participation was needed to have standing to appeal to LUBA. On the record limitation provides a strong incentive for applicants to give the Commission all the information available, so the Commission could make the full decision with everything disclosed up front.
 - He explained that if a neighbor did not prepare for a hearing, but opposed an application approval they could request a continuation. Neighbors usually did not have serious evidence, but rather only arguments regarding impact, etc.
 - **Ms. Mangle** stated they could argue and focus on the lack of evidence in the record regarding the tree, as an example, resulting in the criteria not being met.
 - **Ms. Shanks** added that typically the problem was an applicant doing an end-run at the Commission, either by not being prepared or doing so purposely. Although the concern was valid, it did not really happen as portrayed. She noted that Type I and Type II applications decided by the Planning Director and appealed to Commission would not be restricted. Type III applications have their day in court with the Commission and then in a more limited way with Council as proposed.
- Noted that did not mean the process could not be taken advantage of in the future. While sympathetic to the concern, a process was in place and the evidence had to come forward.
- Understood that if someone came forward and raised the issue that an applicant did not consider X, Y, and Z, they would be allowed to bring in photographs of the issue to Council.

- **Mr. Hall** clarified that photographs would be considered evidence. How to draw the line or restrict it would be up to City Council.
- Posited if it was noted that a tree removal was not addressed in the application and the Commission decided to disregard the concern and move forward with approval or denial, nothing prevented Council from making sure that was being addressed in the next phase of the appeal process because they would have the same responsibilities as the Commission.
- **Ms. Mangle** stated one way to think about it philosophically was if it was a limited appeal to the record, which included the papers, photos, public comments, and the applicant's material, the Commission's job was to review it and make a decision. If it was limited to the record, the same assemblage would be given to Council to see if the Commission made the right decision.
- This was different philosophically than allowing for additional information to be added to the assemblage of the record. The City wanted the best projects and the best decisions where everybody was considering the totality of the material. The approaches were different, and the Commission needed to decide which one to put in the Code.

Commissioner Gamba stated if they were just re-judging the same information and that information was incomplete, justice was not being served, only serving the process.

- **Mr. Hall** stated the proposed approach mirrored the U.S. justice system more than what currently existed in the Code.

Commissioner Batey stated she was not concerned about it from the justice angle. When people really struggled and had an issue, it caused the Commission to struggle and have an issue and they received a continuance. She was fine with the language as presented, but it was really Council's decision. This approach was consistent with other things in the package, such as moving some of the land use to Type III, in that it took some of the burden off Council and concentrated it more at the Commission level.

- **Ms. Shanks** shared that at the last worksession, Council was fine with a limited appeal to them on decisions already made by the Commission, but had questions about whether Type I and Type II applications appealed to the Commission should stop there. They were considering that they go on to Council.

Chair Klein commented that the Commission had to come prepared, along with the applicant and those providing public testimony.

Ms. Baker suggested instructions be given at the first hearing, so that if one believed that important evidence was missing, a continuance could be granted and the decision made at a subsequent hearing.

Chair Klein responded that those instructions were already on the back of the agenda, Item 11 Meeting Continuance, and also referenced at the beginning of meetings as well. He read from the script, "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, Planning Commission will either continue the public hearing to a date certain or leave the record open for at least 7 days for additional written evidence, argument or testimony. The Planning Commission may ask the applicant to consider granting the extension of the 120-day time period for making a decision if a delay making a decision could impact the ability of the City to take final action on applications including the resolution of all local appeals."

Commissioner Batey suggested addressing the concern by improving the script, rather than allowing new evidence submission on appeal.

Chair Klein cited what was read at the beginning of meetings, "Agendas and additional copies of the staff report are available on the table in the hall. If you have not picked up an agenda, please do so. It contains important information about the process."

Ms. Mangle suggested adding, "including the fact that a continuation can be requested."

Commissioner Gamba suggested the statement "if a continuation was not requested, any new evidence would not be admissible on appeal," which was an important key phrase.

Chair Klein summarized that instead of adding language in the Code, the wording could be added to the back of the agenda.

Commissioner Gamba:

- Asked if anything in the Code specified what was put on the agenda. Nothing in the Code would prevent a future Commission from removing that language from the agenda.
 - **Mr. Hall** responded that this was more a spectrum of how many times people got a new shot at something. Regarding "good" versus "bad" people regarded a spectrum too. If the City were run by bad people in the future, they could also change the Code without telling anyone. The call was whether the Commission wanted to give people two opportunities at the local level to present new evidence, or give them one chance to present evidence and then another chance to make their best argument. Once done at the local level, they could not present more evidence to LUBA or other further appeals available.
- Believed people should have two opportunities to present evidence locally.

Chair Klein called for a straw poll: should new evidence be allowed to be brought forth as an application moves forward to City Council after a Planning Commission decision?

Commissioners Wilson and Gamba voted Yes; Commissioners Klein, Harris, and Batey voted No.

Ms. Mangle stated she would present the issue to Council with a minority report as was done when decisions were not unanimous.

Commissioner Gamba believed "private interest" should be defined as stated in MMC 19.1010.5 Participation by Interested Officers or Employees, 5.1 Page 90, "The officer or employee of the City who has financial or other private interest in...". "Private interest" appeared several times in the proposal and was very vague.

- **Mr. Hall** agreed it was vague. He explained it was meant to mirror the ethics of government officials in state law. Basically, the standard was that one could not participate if one had any financial interest in the outcome of a development or proposal, whether personally or that of a family member or a business associate.
- Staff clarified that "officers" referred to appointed committees, the Commission, Council and possibly NDAs; "employees" referred to staff. The next section, MMC 19.1010.6, involved committee members and was specific to the Design & Landmarks Committee (DLC).

- **Mr. Hall** stated the actual issue was for the Commission to determine what the standard should be. The standard in MMC 19.1010.5 as proposed was stricter and broader than the state standard in who had to recuse themselves. If the Commission wanted to extend beyond the financial interest of self, business partners and immediate family members, the City had the authority to do so; it could not be made less strict than the State standard.

Chair Klein understood the decision to recuse was placed on the individual Commissioner. It could be pursued with the State ethics board if there was a question about a Commissioner's participation. The Commission made sure that a private interest was not being taken advantage of.

Commissioner Gamba:

- Noted the language did not specify "financial interest." He clarified he did not want "private interest" removed; only made less vague.
 - **Mr. Hall** explained that if a separate standard from the State existed, someone could challenge to LUBA that this section was violated because of a private interest, because it was not clear what "private interest" meant.
 - **Commissioner Batey** believed City attorneys that had advised the Commission in the past about conflict of interest were considering the State standard, not the City's Code language.
- Suggested copying the State's language or at the very least make the proposed language specific.
 - **Ms. Mangle** agreed. Staff would address the issue.

Commissioner Batey stated that she had some wordsmithing things she would work on with Ms. Shanks. She liked staff's language regarding story poles on the blue handout. She agreed with the point that the photos counted as opposed to the poles themselves. Though photos could make poles look drastically different, the City could specify where the photo was taken from.

Commissioner Gamba stated the lens would still be an issue. He suggested that the poles be up for a sufficient length of time to allow for the Commission to go look at them. Another option would be coming up with a standard for staff to go out to take photographs.

Chair Klein asked if there was a way to require story poles when a project came within a percentage of some sort of impact.

Commissioner Gamba did not believe story poles should always be required, but they should be a tool that could be required.

Staff noted that Mr. Hall was apprised of the situation and staff had inquired how story poles would work with the process and parameters required by State law, and how the story pole results could be included into the record. Because the poles would not be part of the material, photos would be substituted, but discussion of them could be in the record as well. What was the best way to get an actual feel for what the project looked like and translate that into the record should the Commission not be able to look at the project or story poles themselves?

Mr. Hall stated there were a few ways to do it. The applicant and Commissioners could take pictures, and anyone at the hearing who took pictures could submit them into the record. The Commissioners could go look at the project and describe it in the open hearing.

- The timing regarding when the poles had to go up was not really legally constrained. The issue was what the Commission wanted the requirement to be. The submission requirements list to get the application deemed complete was not approval criteria but completeness criteria. The Commission needed to decide if they wanted to be able to deny the application based on just a lack of story poles. They should look at the standards for each type of application they wanted story poles applied to. A lot of the time, an applicant did not necessarily have to immediately commit to a certain massing or to what exactly the structure would be.

Ms. Mangle agreed that it was very dependent on the zone and type of application required. Each application would be different. The Commission needed to decide what was needed to be satisfied to meet the criteria. Sometimes that would mean directing the applicant to return with better information or to build story poles.

Commissioner Gamba asked if the Commission could require something not mentioned in the Code.

- **Ms. Mangle** replied that if the criteria were such that the Commission needed to understand the height and massing, for example, and the Commission did not know based on what was submitted, they could request a massing study. There were definitely certain applications where that information was needed to determine whether or not it met the criteria.

Commissioner Batey noted there had been applications where the Commission wished they had the ability to ask for that. Although it was implied that the Commission had the ability to ask for such information, the Commission had not ever felt like they could. While she agreed extensive detail did not need to be included, it was important to include the concept somewhere in the Code to curtail dispute by the applicant.

- **Ms. Mangle** stated applicants would still push back and complain. She noted staff was hesitant to put too much in the Code when the logistics of how it would work were not understood.

Commissioner Gamba stated it would make sense to put the story poles up at the same time the public notice signs were posted. The public would then be able to see what the project looked like when they received notice of the project. The poles could then come down the day after the hearing.

- **Chair Klein** was concerned about public safety issues with a 45-foot pole on the site for 20 days.
- **Ms. Mangle** added they also needed to decide on which applications the story poles would be required.
- Believed staff would have to use discretion about when to require the story poles.
 - **Ms. Mangle** noted the proposed language stated the City could require the story poles when deemed necessary.
- Added that he would include the logistics to prevent someone from putting up story poles, taking a quick picture, and pulling the story poles down.

Commissioner Batey suggested amending the last sentence of MMC 19.1003.2.C, as noted on the blue handout, to state, "For applications where the subjective aspects of the height and

mass of the proposed development will be evaluated, ~~photographs of~~ temporary on-site “story pole” installations that simulate the proposed development, **and photographic documentation thereof**, may be required.”

- **Ms. Shanks** noted staff was always pushing the applicant and this would be more of a struggle because it was not just something on a piece of paper. She agreed something like this was needed to really understand some projects.
- Staff was trying to update the submission requirements form and have this language mirror that to state what the City needed to have adequate public review of a proposal. The decision makers and public need to understand what was being done to ensure the approval criteria were being met, otherwise the proposal would be denied.

Chair Klein said he never felt like the Commission had the power to require an applicant to do story poles, even though they could request more information. He suggested that if something did not look right when first reviewing the packet, the issue should be raised at that time. If height was an issue, for example, a Commissioner could request a photo and to put up the story poles. Four Commissioners viewing the site at the same time would break ORS meeting laws. He added that there were buildings where he would not have felt comfortable leaving story poles out on site.

Commissioner Gamba reiterated that the poles should be put up when public notice is sent, and removed the day after the hearing. He noted that Colorado had bigger storms than Oregon, and they put story poles up at every project. It was not just a pole sticking out of the ground but more similar to the framework of a house using 2x4s.

Chair Klein stated that with the knowledge that the Commission could ask for more information, if height was a potential issue that could be noted as a potential red flag in the packets.

- **Ms. Shanks** noted that since the applicant’s materials were sent to the Commission earlier now, the Commission could notify staff if they came across certain issues.

Commissioner Gamba believed Commissioner Batey’s slight change in the wording would solve the problem.

Commissioner Batey stated her other issue was the lapsing of nonconforming uses. In the current Code, if a nonconforming use was not used for 6 months, it lapsed, and the Code proposed to extend that to 1 year. She had concern the City might lose some flexibility to get rid of some unwanted nonconforming uses.

- **Ms. Mangle** stated this was something staff proposed to make it consistent with what the Commission had discussed about conditional uses.
- **Ms. Shanks** reminded the Commission had a big discussion about conditional uses and had settled on 2 years. Staff proposed changing it from 6 to 12 months for nonconforming uses because the nonconforming structure rebuilding rights were for 1 year. So if a nonconforming use in a nonconforming structure burned down accidentally, they had a year to rebuild their nonconforming structure, but they would not be allowed to reestablish the nonconforming use after 6 months, which did not seem right. The other reason staff believed it would be good to extend the time was because of downtown nonconforming uses and what it took to get a new tenants. The two sides to the issue involved wanting to get rid of some nonconforming uses and the economic issues regarding vacancies.
- Some nonconforming uses outside of downtown included Wichita Feed & Hardware, which was a commercial use in the manufacturing zone. There were many residential

uses in the manufacturing zone along Johnson Creek Blvd that were nonconforming. Milwaukie Florist on Lake Rd was a nonconforming business in a residential zone. There are some duplexes and multifamily housing scattered throughout the city that were nonconforming uses. The majority of businesses were downtown or in the North Industrial Manufacturing Zone. Amadeus Manor Restaurant was also nonconforming.

- **Ms. Mangle** clarified that most churches were not nonconforming uses.
- **Ms. Shanks** added churches spanned the whole continuum, but only a few would be nonconforming, because they predated the Zoning Code and had no improvements. Otherwise they become a conditional use or CSU, and therefore no longer nonconforming.
- Agreed with the 1-year timeframe after the clarification.

Chair Klein:

- Asked if the changes could be summarized and a motion made or if the issue should be carried over and have staff make the changes and return.
 - **Ms. Shanks** stated it depended on the Commission's comfort level in terms of latitude. She recorded all the specific wordsmithing discussed and it sounded like the Commission agreed with everything other than some specific wording suggested by Commissioner Gamba, which were specific and small enough to be easily captured. She believed she had gotten complete direction from the Commission. However, if the Commission wanted to see the final, that was fine as well.
 - **Ms. Mangle** said she wanted to hear more from Ms. Baker. There were a lot of issues raised, and she was not sure she understood a lot of the specificities. She deferred to the Commission about whether they wanted to hear the results of that discussion or if they wanted staff to work with Ms. Baker as they refined the proposal going to Council.
- Did not have a problem continuing it for 2 weeks and then having a quick vote on it. Commissioner Churchill would be present at that time, and they needed to decide what would be appropriate for his dialogue to be included.
 - **Ms. Mangle** responded that the digital recording of the meeting could be provided to him.
 - **Mr. Hall** added that unless a decision or tentative decision was made in deliberations, the discussion could continue when the matter was reopened and Commissioner Churchill could provide input.
- Noted that the public testimony portion was not yet closed.
 - **Mr. Hall** reminded it was legislative. If the Commission wanted to hear from people who attended next week, that was on the table. It could also be closed to public testimony.
 - **Ms. Shanks** noted that returning in 2 weeks only allowed one week to prepare the packet materials. Staff could bring the final document and note just the changes rather than presenting a full packet, if the Commission agreed. This would also allow staff more time to work with Ms. Baker.

Following a brief discussion, the Commission consented to staff posting the material online the Friday before the meeting and then bringing material to the hearing.

Ms. Baker asked for a continuation.

Vice Chair Harris moved to continue the public hearing on ZA-10-02 and CPA-10-03 to date certain February 8, 2011. Commissioner Batey seconded the motion, which passed unanimously.

6.0 Worksession Items

6.1 Summary: Discussion of annual work plan preparation & review of bylaws Staff Person: Katie Mangle

Ms. Mangle stated that last year the annual Planning Commission/City Council meeting did not occur due to the City Manager and City Councilor turnover. This year's joint meeting was scheduled for March 1, 2011. To prepare for that meeting, the Commission needed to discuss the annual work plan and review the bylaws, which would be addressed another time.

- She distributed a copy of the 2009 work plan, noting most of the plan had been completed. Reviewing the operating Planning Department work plan, which was different than the Planning Commission work plan, might also be helpful. The Commissioners could see if they wanted to add or change anything. She encouraged the Commissioners to consider what work, if any, they might want to do as individuals to help the City address any specific issues that concerned them.
- She explained that the Urban Renewal Plan was noted in light gray which indicated no funding was involved. Council had asked staff to consider urban renewal, but offered no clear direction about actually pursuing it yet.
- Conducting public hearings would remain the Commission's first priority as that was the Commission's charge. The Residential Development Standards project would be the next project and then hopefully review of the commercial areas. These projects should not be characterized as just Code projects, but are new and long-range planning projects that would lead to Code changes.

Commissioner Gamba confirmed the Code change would involve zone changes for the commercial zones. He asked if the concept of 20-minute neighborhoods could be discussed, being able to put commercial entities into areas currently zoned nothing but residential. For example, a small grocery could be allowed along Lake Rd, which is an artery, but it had no commercial zoning.

- **Ms. Mangle** believed all that needed to be done was to make sure the existing commercially-zoned areas were empowered to be of better service to the neighborhoods. There was already a lot of commercial infrastructure well within the 20-minute radius. Also existing commercial areas had many unnecessary limitations. The question was how to utilize the commercial areas.
- She asked the Commission to consider broader projects. She would begin drafting the 2011 work plan and asked for input from the Commission about the work plan and bylaws, which would be discussed at the next meeting.

7.0 Planning Department Other Business/Updates

Ms. Mangle announced that all the microphones in the chambers were being updated.

8.0 Planning Commission Discussion Items

Commissioner Batey stated she wanted to include the Sign Code in the work plan. She encouraged people to look at the gas station sign at the new Fred Meyer on McLoughlin Blvd. Most gas stations along McLoughlin Blvd actually had monument signs rather than pole signs.

- She noted the new electronic billboard sign that was installed in the North Industrial Zone. She would like to have a wider discussion about the Sign Code with Council at the joint meeting in March.

Commissioner Gamba added that a lot of people were talking about that billboard sign.

Chair Klein noted the Sign Code lacked teeth last time, but perhaps with a new Council that

would change.

Ms. Mangle provided background on the billboard sign, noting it was expected to be illuminated.

9.0 Forecast for Future Meetings:

- | | |
|-------------------|--|
| February 8, 2011 | 1. Worksession: Residential Development Standards project |
| February 22, 2011 | 1. Worksession: North Clackamas Park North Side Master Plan <i>tentative</i> |
| March 1, 2011 | 1. Meeting with City Council 5:30 pm |

Ms. Mangle reviewed the forecast for future meetings with these comments:

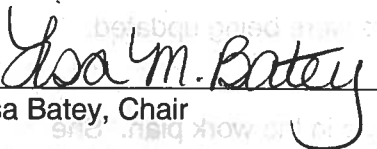
- Staff was ready for a worksession on the illuminated signs on McLoughlin Blvd for February 8. Staff received draft Code from the '76 Station owner for consideration. More issues would probably be raised than resolved.
- The Commission would not be addressing the Residential Development Standards on February 8. Steering committee meetings would begin in late February and she invited anyone's participation.
- North Clackamas Parks and Recreation District would be discussing the North Side Master Plan on February 22; that was no longer tentative.

Chair Klein noted that the recent article in *The Clackamas Review* about him saying holes could be driven in the Code did not accurately represent his comments. His goal was that as Code was rewritten, it would make it easier for all users involved, whether an applicant or the neighbors or anyone in the public, that the Code be simplified so it did not necessarily contradict itself. He emphasized his comments were in no way meant to have the tone portrayed in the article. The interview was initially about one topic, but was turned to an entirely different subject. He apologized for the manner in which the article was written.

Meeting adjourned at 9:50 p.m.

Respectfully submitted,

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


Lisa Batey, Chair



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday January 25, 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 November 9, 2010
 - 2.2 December 14, 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** – Public hearings will follow the procedure listed on reverse
 - 5.1 Summary: Land Use and Development Review Tune-Up Code Amendments
Applicant: City of Milwaukie
File: ZA-10-02, CPA-10-03
Staff Person: Susan Shanks
- 6.0 Worksession Items**
 - 6.1 Summary: Discussion of annual work plan preparation & review of bylaws
Staff Person: Katie Mangle
- 7.0 Planning Department Other Business/Updates**
- 8.0 Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 Forecast for Future Meetings:**
 - February 8, 2011 1. Worksession: Residential Development Standards project
 - February 22, 2011 1. Worksession: North Clackamas Park North Side Master Plan *tentative*
 - March 1, 2011 1. Meeting with City Council 5:30 pm

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, November 9, 2010
6:30 PM**

COMMISSIONERS PRESENT

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

STAFF PRESENT

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

COMMISSIONERS ABSENT

Scott Churchill

1.0 Call to Order – Procedural Matters

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

2.0 Planning Commission Minutes – None**3.0 Information Items – None**

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

5.0 Public Hearings– None**6.0 Worksession Items**

6.1 Summary: Water Master Plan

Staff Person: Ryan Marquardt

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

work for the Plan and would continue to be involved. Council had already looked at the scope and request for proposals and would make the final decision on the Plan's adoption.

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

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

- Daily usage figures were not available at this meeting but would be provided at a later date.
- The City had actually seen a 1-2% overall decrease in water usage over the last 15 years, compared with a population increase of about 1% per year. The City did not have water usage broken out by commercial versus residential.
- About 11% of the water the City produced was unaccounted for according to usage records. The difference was due to leaks, fires, for which water was not metered, and other anomalies. This information was based on only the last 2 years of data; the meter at Well 5 was installed wrong which negated generating accurate information from data collected in prior years.
- Staff was basing the projected increase in water needs strictly on land use data, not population growth. The consultants were asked to include data for both buildable and underutilized lands to determine future water demands.
 - The current zoning was used to determine water demand, not possible future zoning changes. Underutilized lands included parcels which were zoned for higher density, but currently developed at a lower density.
- The Urban Growth Management Area (UGMA), a theoretical planning area, was currently served by Clackamas River Water. The City had an agreement with the County to coordinate on development and providing services there when needed.
- Water use from other providers through interties only occurred during emergency situations and was rare. All 7 wells were currently operational and had been for the past 2 years. All the wells were on the Troutdale aquifer.
- The consultants would not be testing for leaks; that was already being done by City maintenance staff.
- The existing system was a conglomeration of about 4 different systems that the City had acquired over time. It was quite old with a lot of cast iron, steel pipes, and lead joint pipes.

74 Areas with lead joint pipes would be put into the database to determine whether they would
75 be replaced.

- 76 • The Troutdale aquifer was 300 sq miles, covering most of Multnomah and Clark counties.
77 The only other user was the City of Portland for their emergency back-up wells.
78 • The water quality person in the City's Operations Department had reported that they do
79 keep data on the stability of the aquifer's level, and it had been stable.
- 80 • The consultants were looking at above-ground issues, existing systems, and projecting what
81 improvements would be needed for the City to provide water service in the future. They
82 were also building a hydraulic model, which was where most of the \$200,000 in consulting
83 fees had been spent.
- 84 • West Yost Associates had been chosen from among four consulting proposals received
85 as a result of a Request for Qualifications. Proposals were ranked based on a scoring
86 system by the Water and Engineering Departments and West Yost received the top
87 score. All the proposals had been similarly priced.
- 88 • With regard to stormwater management, which was not part of this Plan:
 - 89 • Removing or replacing drywells or drainage wells within a certain distance of the City's
90 water wells was an ongoing project. The drywells needed to be replaced with a pipe
91 system, which was very expensive. Stormwater could not be put into an underground
92 injection control (UIC) device. A drywell was a UIC, and they were all old. The City was
93 slowly coming into EPA compliance. All the UICs were mapped. Drywell replacements
94 were not part of the Plan.
 - 95 • Bioswale systems were an option for piping stormwater. There was no clear definition of
96 a UIC versus a swale. Stormwater could be treated and then put into a pipe system
97 through a swale in any area within a 2-year travel time from the surface to the
98 groundwater table in the zone of a well. A swale could be a problem if the water entering
99 it was not already clean. The 2-year travel time defined the geography.
 - 100 • Portland, which was situated over the aquifer, was installing bioswale systems.
101 Milwaukie had adopted Portland's stormwater manual and was following those
102 policies, although Portland was not on a well system.
 - 103 • The 2-year issue regarded stormwater close to actual well points. Maps showed
104 where the 2-year time of travel applied. The City could do infiltration treatment
105 swales in those areas, but it would have to be approved by DEQ.
 - 106 • It was significantly cheaper to do swales rather than piping for stormwater.

- 107 • The Plan was intended to establish a baseline, understand how the water system worked,
108 and project future needs. Micro-generators, which would generate electricity at the point of
109 outflow from the treatment plants, could be addressed in a separate report. The Plan would
110 not preclude the City from doing that.
- 111 • The consultants had preliminary numbers indicating peak hours and seasons of demand.
112 That chapter was being completely rewritten. The highest usage was in August due to
113 irrigation.
- 114 • The Plan would not include information on plans for grey water systems or rain water
115 collection systems that the City could require of City buildings, as well as industrial and
116 residential properties that would alleviate the peak usage. Those items could be addressed
117 separately if staff was so directed.
- 118 • Those issues applied to more than just stormwater. If fresh water currently used for
119 irrigation could be replaced with reclaimed stormwater, future fresh water needs could
120 be greatly reduced.
- 121 • As part of the City's Comprehensive Plan, this Plan should include discussion about
122 conservation as a policy goal as well as the more efficient use of water.
- 123 • Fresh water usage had decreased in the last 20 years, and projections were being based on
124 maximum build-out, which may or may not occur in the next 20 years.
- 125 • The Plan was not just a report, but a plan for maintaining the current water system. The
126 scope was not just to draw conclusions and data, but to provide recommendations and
127 management tools to help City staff continue the modeling and continue to address
128 development review.
- 129 • Staff sought questions and feedback from the Commission about the Plan to help determine
130 what could still be incorporated into the Plan itself, what might need to be in the
131 Comprehensive Plan policies, and what might be entirely different projects or programs at
132 some point in the future. Comments about water conservation, etc., were valuable.
- 133 • The purpose of the worksession was to start the discussion and get ideas on the table
134 so staff could figure out how to address them before returning to the Commission for a
135 recommendation.
- 136 • The Wastewater Master Plan would be another active Master Plan to come before the
137 Commission in a few months. Stormwater management was not being addressed at this
138 point.

- 139 • Conservation and redirection of wastewater needed to be addressed in the big picture. The
140 1% reduction in consumption was likely due to conservation, which should be taken into
141 account in the Plan.
- 142 • The Plan should address billing. Water usage was currently a small percentage of the water
143 bill compared to user fees and sewer charges. Billing was not necessarily based on
144 consumption. City sewer bills were based only on winter usage, because summer usage
145 involved so much lawn watering. A billing policy change by the City to financially encourage
146 conservation would go a long way toward accomplishing results.
- 147 • Tankless heaters, low-flow showers and toilets would continue to increase if incentives
148 exist for citizens and developers to add them.
- 149 • Staff would consider where conservation goals and sustainability incentives could be best
150 addressed, whether in the Plan or Comprehensive Plan where the utilities section would be
151 updated.
- 152 • The City should likely be setting policy for sustainability and conservation in other areas,
153 such as building practices, and review information and incentives so that the City is
154 doing more in different areas.
- 155 • **Ms. Mangle** noted the email she sent inviting the Commissioners on a ride-along with Don
156 Simenson for an interesting tour of the City's water system. He really knows the system and
157 could probably answer a lot of their questions.
- 158 • The consultants' contract was originally scheduled to end in November, but was extended to
159 February 2011. A lot more work had to be done on the hydraulic model than anticipated.
- 160 • Regarding Item 6.2.3 Abandon Obsolete Water Mains and Transfer Services on 6.1 Page 8
161 of the packet, new water mains had been installed 10 to 20 years ago but the services were
162 not transferred. There had been political uncertainty whether the City wanted to be the main
163 service provider for many different services, and this was part of that issue. The City was
164 now in the process of switching over to the new mains. The redundancies would be
165 abandoned; most were old, 4-in water mains in poor condition.
- 166 • Staff would return when they had actual figures to share, as well as information on the age
167 of the system, where lead joint degradation was most prevalent, and numbers on water
168 volume so they could quantify the 11% loss.
- 169 • The Commission also wanted to see work on revising billing practices to place more
170 emphasis on lowering consumption to incentivize users to conserve. The City was not
171 currently promoting conservation.

- While conservation would affect the needed supply, it would not impact the size of the City's water mains or storage needed, which was based on fire flow.
- The City's past problems with billing were still being sorted out, but a lot of progress had been made. Commercial accounts were complete and residential accounts were being addressed. Citizens would receive personal contacts regarding corrections.

6.2 Summary: Land Use and Development Review Process Tune-up (Briefing #6): Review Conditional Uses, Variances, Nonconforming Situations, Amendments, Development Review, and Procedures draft chapters
Staff Person: Susan Shanks

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

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

Ms. Shanks reviewed the key policy changes to the following Code chapters with discussion and additional comments from the Commission and staff as noted:

MMC Chapter 19.800 Nonconforming Uses and Development

- Rights to Rebuild. Staff proposed retaining the current provision regarding a citizen's rights to rebuild a nonconforming structure in the case of fire or other destruction out of their control. This decision was based on the advice of the City Attorney and consultants.
 - If the Commission disagreed, both the Commission's and staff's recommendations could be forwarded to City Council for a decision.
 - Alternatively, staff could put the item on the Code fix list if the Commission felt strongly

that that was the direction the City needed to go, and it could become part of another project.

- **Damien Hall, City Attorney**, explained the issues involved in changing a citizen's right to rebuild nonconforming structures with these comments:
 - This type of policy change would require a lot of public outreach. Citizens have had this right and understood that they could rebuild their structures if destroyed. They also may have made investments accordingly.
 - Insurance policies could rely on the right to rebuild, and changing that right would potentially void those policies.
 - The loss of a home or business to fire or other damage was not the best time to get rid of nonconforming structures, when the owner was under distress.
 - Other tools were available to address the problem. Denying rebuilding seemed like a borderline taking situation and warranted exploring other options. Perhaps the City should consider buying a structure if it was that offensive.
 - Encroachments into the right-of-way were a different legal scenario than not meeting a setback standard on private property. The City could tell a citizen at any time not to encroach; they did not have the same rights to maintain or retain that if the structure changed.
 - This policy allowed citizens to retain a zero lot line, if they so desired. A City sidewalk could be built up against the home and the gutters would run right onto the sidewalk. If that house burned down, it could be rebuilt in the same spot rather than being moved 20 ft back from the sidewalk.
 - Rebuilding nonconforming structures due to loss was a rare occurrence in the City. More often, citizens voluntarily want to alter or demolish nonconforming structures, in which case, the City would require conformance. The right to rebuild was limited to destruction by an accident, so the policy would not result in the magnitude of change envisioned.
 - One major concern was that nonconforming structures often have more than one nonconforming issue. Structures with zero setbacks could have limited lot space that would not allow normal setbacks or other policies. Imposing this policy could potentially make something unbuildable.
 - The policy could be changed so nonconforming structures could not be rebuilt and then owners of destroyed nonconforming structures could request a variance from the Commission. Perhaps the associated fees for that process could be waived.

- 238 • Not allowing the identical structure to be rebuilt could still be constituted as a taking,
239 even if the owner could come before the Commission to request authorization to rebuild.
- 240 • The City had no idea where all of the nonconforming structures were. Every time the
241 Code is changed, nonconformity was created. This policy change would not address a
242 set problem and would be very aggressive without a certain and specific target. The City
243 could end up facing a lot of unintended consequences and risks.
- 244 • Reviewing each destroyed structure on a case-by-case basis was proposed, rather
245 than accepting flaws in the old policy. The entire scenario could be reviewed to
246 determine what options were available to bring the nonconforming structure into
247 conformity.
- 248 • The best practice was to move nonconforming structures into conformity whenever
249 possible.
- 250 • Adding another layer of process, such as having citizens come before the Commission,
251 would involve the analysis of various competing issues like Willamette Greenway (WG)
252 or Water Quality Resource (WQR) area requirements. This would cost citizens time and
253 money even if the process was free. The City would not be able to take on all that
254 analysis. The City needed to be smart about where that process was added and to
255 which properties. The entire scope of the problem was not understood.
- 256 • The City needed to be careful moving forward with regard to unforeseen limitations on
257 homes or businesses. Owners might be left with a less valuable structure.
- 258 • The insurance company aspect was important. Insurance companies tend to be very strict
259 about building exactly what was there before.
- 260 • The fact that insurance companies and appraisers called to ask if structures can be
261 rebuilt if destroyed implied that other cities' codes may restrict building some structures.
- 262 • Some cities have a more nuanced approach with some parameters, but usually allowed
263 for rebuilding that usually defaulted to at least the footprint. Portland allowed the
264 rebuilding of the same footprint, but the rebuild had to conform to the current height
265 limitations, for example, if the structure was previously nonconforming as far as height.
- 266 • A policy that allowed a case-by-case consideration and instructed future Commissioners
267 and staff to be "wisely lenient" might work.
- 268 • The Commission would then have to determine the criteria to lay the groundwork for
269 such decisions. The Code would have to be very well written.
- 270 • It should also be worth the cost and level of analysis required from the property

- 271 owner. Coming before the Commission with an obvious case of approval or denial
272 would be a waste of time and money.
- 273 • The City needed to be sensitive to the fact that these owners would be caught in a
274 moment of distress.
 - 275 • Staff confirmed that the few cases where this Code had applied really were
276 accidental losses. It did not apply to property owners wanting to replace or repair
277 failing structures. It had been primarily applied in cases of loss in fires.
 - 278 • Staff did not know whether the 1996 flooding had resulted in the application of this
279 Code.
 - 280 • Staff was not opposed to looking at changing the policy, but it would require more careful
281 thought in terms of how to craft it and what other good models were available. They did
282 not feel it was wise to include it in this Code Tune-up Project. It had not been on their
283 radar as a problem that needed to be fixed. Staff understood the Commission felt
284 strongly that they look at it.
 - 285 • Since insurance agents did call the City and ask about the rebuilding policy, there may
286 be options the City could consider that would satisfy the Commission's desire to address
287 bad building decisions of the past. Options being employed by other cities should be
288 explored.
 - 289 • The City would never have a voice in whether or not insurance companies had to
290 pay property owners for rebuilding, because it involved a private contract between
291 the business and consumer.
 - 292 • The urgency of this Tune-up Project was based on the timing of the funding for the
293 consultants work on this Code project and the Residential Design Standards project,
294 which would end in June 2011. The consultants' scope included the final draft of the
295 Code. The deadline did not apply to actual adoption of the changes.
 - 296 • The intent was to move these Code amendments forward, even while the
297 Residential Design Standards project was still going because that project would
298 require many of the tools being created in this project. The community was more
299 interested in the Residential Design Standards, but the tune up was the foundation
300 for that.
 - 301 • The City would not necessarily need to wait 2 years to return to this policy issue, but
302 some things could not be addressed right now and continue moving at the pace
303 required. There were more controversial issues that staff had not foreseen tackling.

- 304 • Amortization of Nonconforming Uses. This proposal would create a process whereby the
305 City could discontinue a use in the future. Some land uses were not compatible and some
306 were actually detrimental to the community. Staff hoped to adopt the amortization of
307 nonconforming uses tool so the City could prevent certain uses from continuing if necessary.
- 308 • Staff was working with the City Attorney to differentiate between high and low impact
309 uses. Studying uses now would give the City the opportunity to evaluate whether some
310 uses were in the right location for the long term, and amortizing could help create the
311 desired vision for various neighborhoods.
- 312 • This policy change would create the framework for the future; not identify specific
313 properties the City would want to discontinue at this time. Several sites in the city
314 were noted where amortizing nonconforming uses could be a beneficial tool.
- 315 • Guidelines and controls would need to be written into the amortization tool beyond just
316 high or low impact to protect against overly aggressive application of the policy.
- 317 • Current draft language distinguished between high and low impact. The tool would
318 not apply to uses not negatively impacting surrounding properties, such as a floral
319 shop in a neighborhood.
- 320 • Once high impact nonconforming uses were identified, Council would consider a list
321 of criteria when determining an amortization schedule. The idea was to provide
322 some sort of fairness for the property owner. The value of the property and
323 improvements and how long it had been nonconforming would be considered to see
324 if a property owner had an opportunity to recoup their investment. Negative impacts
325 on surrounding properties and the fact that it was nonconforming would also be
326 considered. Council would then develop an amortization schedule accordingly, such
327 that the use in question would terminate on a certain date.
- 328 • As written, Council would direct the Planning Director to evaluate and identify high
329 and low impact uses. There would be both staff and then Commission level review. If
330 property owners were not satisfied, they would also be able to take the matter before
331 Council. With three levels of decision makers, including the elected Council, abuse
332 was highly unlikely.
- 333 • This action was not considered an imminent domain issue and did not require
334 compensation to be made because the City Zoning Code authorized the action.
- 335 • Once the amortization schedule ended, a legal nonconforming use would become to
336 a violation of the Zoning Code.

- Theoretically the owner could leave the property vacant to spite the City, but that was not expected nor was that the policy's intent, although it was the owner's prerogative.
- Council was unlikely to invoke this power unless there was a huge neighborhood outcry. As elected officials, Council would be held responsible for whatever decision they made on this. Amortization also had to be initiated by Council.
- As written, the policy did not set a minimum or maximum amortization schedule, but it would probably start with approximately a 5-year period. This timeframe would extend into the following Council election, so the new Council would be addressing the issue.
 - It was unlikely that a property owner would wait until the end of a schedule to choose an alternative use.
- This tool is being used elsewhere in the country.
- This tool would be used in extreme situations where there really was a public outcry and was just another parameter that could be set on certain uses not considered appropriate. This was a big hammer and hopefully would be used sparingly, if at all.
 - It would be effective as a threat; something that could be used in an egregious high-impact situation. The City might not actually have to use it, but it could prompt conversation to work out problems.

MMC Chapter 19.900 Land Use Applications.

- 19.904 Community Service Uses (CSU) and 19.907 Downtown Design Review were being moved, but not revised, as well as all the sub-applications under 19.910 Residential Dwellings. Director's Determination 19.903 was being expanded to enable a formal determination for other citizens' requests, such as whether a use was similar to those allowed outright.
- **Chair Klein** questioned why the City even had a CSU since it essentially put nonconforming uses in an area where they should not necessarily exist otherwise. The City looked at nonconforming uses as being parks and churches and schools, etc. They should either be allowed or not allowed in an area. A CSU had put a church in the City's industrial area.
 - Staff would be considering eliminating the CSU designation and making them a type of conditional use since essentially CSUs are a type of conditional use. This would allow things to be specifically identified in the Code. It was unusual to have a Community Service section in the Code; most other cities had this type of use as a conditional use.

- Conditional use loss of rights. Staff had proposed not continuing conditional uses into perpetuity; if the use changed or was discontinued for 3 years, those conditional use rights would be lost. Staff was now proposing a modification to exempt loss of rights for conditional uses that were residential in nature.
- A possible unanticipated consequence of broadly applying loss of use rights would be the negative impact to uses where the structure and use were very much intertwined. Specifically, residential uses that are designed to be houses or duplexes that could not easily become something else. If one side of a duplex that was a conditional use in a residential zone remained unoccupied for 3 years, the owner would not lose his rights to the duplex
- In contrast, a commercial building could have a conditional use one day and an outright allowed use another day. It was a much easier transition.
- Type II variance allowances. Staff was proposing another Type II variance procedure that limits what one could do as a Type II variance and would allow smaller types of variances to be approved at the staff level.

MMC Chapter 19.1000 Review Procedures

- Land Use Approval expiration dates. Staff sought feedback about the new language.
- Updates to referral/notice procedures. Newspaper notices were no longer the best way to communicate with the public in every case, and staff wanted the flexibility to use different tools. Newspaper notices might still be used at times, but would no longer be required. The proposal required different sign notifications and using more current technology to get the word out. Currently, sign postings were not required for Type II applications, so neighbors would be noticed by mail, but someone walking by who lived just outside the notice range would never know about the application.

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

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

- The subcommittee reviewed staff's proposal for a 25% Type II variance with a minimum front yard setback of 15 ft. Properties that already had a minimum setback of 15 ft, like in the R2 Zone, would not be eligible for a Type II variance, only those zoned R10, R7, R5, and R3 Zones that would potentially have a 20 ft setback. That was to address the issue of keeping

a setback that would reduce some of the opposition the City received on sidewalk projects, while still allowing someone to build a set of stairs if it was routed out to Code.

- The Commission consented to the proposed changes.

MMC Chapter 19.1000 Review Procedures; Land Use Approval expiration dates

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

applications. With this as a policy applying across the board, it would become part of the routine and be consistent.

- The extension process would be fairly straightforward, but applicants still needed to go through it and show that the conditions were still relevant.
- The limits would all be defined in the approval documents. The proposed timeframes were not particularly stringent compared to other jurisdictions.
- The City tended not to deal with professional builders, but with citizens doing their own applications, which was why they did not want to be overly stringent. They wanted to work with people toward getting their projects done.

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

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

469 have to actually give up a lease, move out of the premises or stop doing business.

- 470 • A Director's Determination might come into play in such situations to evaluate the facts
471 of a specific case.

- 472 • The Commission agreed 2 years abandonment should be an adequate timeframe for a
473 conditional use to expire. That timeframe could be re-evaluated if needed.

474
475 MMC Chapter 19.800 Nonconforming Uses & Development; Amortization of nonconforming
476 uses:

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

479
480 The Commission and staff addressed additional questions regarding the proposed Tune-up
481 Project as follows:

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

- 487 • The policy related to businesses in permanent structures. They would be asking someone to
488 come in and operate a specific kind of business for a limited time. What if the business
489 became very successful supplying products or services in the community, and then the 5
490 years ended? That business would have helped develop the neighborhood, would they now
491 be kicked out?
- 492 • If the archery business went away, the City would not want that space vacant. Until South
493 Downtown was developed, the City would want something operating in that space. The City
494 would approve a business coming in, but maybe only for 5 years, because then the City
495 would be building something else.
- 496 • Nothing said a business could not come back, or that the City could not consider some
497 type of extension application. The limitations would provide a useful tool in selected
498 transitional situations. For example, using some open lots for sports fields for a couple of
499 years could work with the understanding that the site would be developed eventually.
- 500 • If limitations on duration and transferability were applied to conditional uses, they should
501 also be applied to use exceptions, CSUs, and to the provision of nonconforming structures

that could only house a nonconforming use. If legally acceptable, the limitations needed to be consistent across the board and should not be applied only to conditional uses.

- **Mr. Hall** stated that legally, things could be designated as temporary uses; most Codes did this. It was not typical to see temporary uses associated with a conditional use. A conditional use allowed uses the City wanted to have, but enable the City to have some control over their numbers or location.
- He advised separating the idea of “temporary use” from the concept of “conditional use”, and discussing what they wanted to have as temporary versus conditional uses.
- Policy-wise, it put people in a really tough spot, because a conditional use was a completely discretionary decision on behalf of the City. They would be allowing people to run a business in a location for x amount of time, but then discontinue it at the end of that time.
- There were times the Commission wanted to impose a limited time conditional use as opposed to imposing a bunch of additional conditions in terms of what was built, etc. It was sort of a trade off: the Commission would not require that the business do some things, but they would also sunset the use at some point.
- Something similar was done with the Sweet Pea Daycare with regard to transferability, not necessarily a time limit on the use; it went with the ownership. If the business were sold, the conditional use would no longer be allowed.
- The transferability was a related limit because it would give the City the freedom to intervene when a business was no longer profitable.
- The point was that the policy would be impacting profitable businesses that employed people, perhaps bringing people into downtown, and then tossing them to the side due to an imposed time limit on the use.
- **Mr. Hall** clarified that the proposal would apply to new businesses being established. As a policy item, a better way to guide what went in might be limiting the permitted uses, not creating some sort of a transitional zone.
- The City had many transitional areas where a vision existed for something different, but did not want to stop people from having going concerns until the City got closer to that vision.
- A conditional use was not an outright allowed use; it was sort of a matter of grace.
- **Mr. Hall** noted that once the policy was approved, it would probably be on the same footing as a permitted use in most places. Applicants would have to modify it, return and revisit their assumptions, but it was presumed that as long as they were modifying within certain bounds

535 it would be permitted.

536 • The conditional use was not usually something unwanted in the community. If the City
537 wanted to limit what was coming in, they might want to limit the use on the front end
538 versus allowing a bunch of uses not consistent with the City's vision, and then basically
539 keep those people in limbo for the time period.

540 • Ideally, the City would rezone and make some current conditional uses outright permitted
541 uses, but so many Code projects were in the queue that revisiting the lists of conditional
542 uses could be five years from now. Something needed to be put in place in the interim, while
543 all the transition was going on around light rail and everything.

544 • Someone could apply right now for a new business on property the City did not want to
545 leave vacant and unused, but the City would not want to commit to having something
546 that could stay for 20 years.

547 • If someone came in and bought those blocks now and built something that was permissible
548 now, what could be done in the future?

549 • That was a different scenario. If someone wanted to rent the archery shop and put in
550 something else, instead of having it sit vacant for the next 5 years, the City wanted them
551 to know up front that 5 years from now that would not be there anymore.

552 • That meant that the renter would be dictating the end use of an area. The market would
553 drive what the value of a given property would be as well as who the inevitable
554 occupants of that area would be, regardless of who was in that structure currently.

555 • The City would have a hard time telling someone they wanted their business and
556 wanted them to work there for 5 years, even though they really did not like the cut of
557 their jib, but after 5 years the City had bigger and grander plans. It was not going to
558 work.

559 • At the end of 5 years, if the City was not prepared to move on that site and do
560 something different with it, were there legal ramifications if the renter had to move
561 out and wanted assurances that the new development would go in?

562 • These were all arguments that might come up in a specific context. The discussion
563 regarded having a tool that might be used on limited occasions, not for something that
564 was a routine part of every conditional use.

565 • **Mr. Hall** inquired how such limitations would be structured. It would require populating some
566 kind of list of temporary uses, separate from conditional uses. It engendered arbitrary
567 decisions. Creating any objective criteria would be difficult if the City just said they could limit

any conditional use to 5 years if they believed they did not want the business around.

- A list of temporary uses would be a written out transition policy. Certain uses would be allowed, but only for 5 years; other uses consistent with the City's future vision would be allowed on a conditional and permitted basis. Another category of uses could be created, but it would be difficult to determine how to go about applying them.

- On 6.2 Page 7, 19.905.5 Conditions of Approval listed limiting the height, hours, days, place, and manner of operation. Why not add "K. limiting the duration of the use"?

- **Mr. Hall** explained that an option existed to limit the duration of the use; it was a discretionary approval.

- If the City approved the use, they should not have to approve it forever. Perhaps the City did not have to, but that ought to be enumerated so applicants know and it was on the record.

- Not having amortization of nonconforming uses would create more concern about conditional use matters that came in.

- That was the whole point of having the policy; if the City was skeptical of a use, perhaps it should not necessarily be brought into the picture anyway.

- This provision would not be used that way, but when the City had a vision. The City had planners and hired expensive consultants for a reason, to develop a vision and provide direction for the City. By the same token, they did not want spaces sitting empty for 6 months, 6 years, or 12 years, while that vision came to fruition.

- This policy would provide the City a tool on conditional uses. For instance, the downtown had odd restrictions; some of it was office and some commercial. The City might want to allow office use in commercial zones and commercial uses in office zones.

- **Ms. Mangle** noted the language stated, "not limited to." If this were an important issue on a specific application, the Commission was not limited from pursuing the time limitation if everyone agreed the conditional use would not be approved without that kind of limitation, which was what had happened with Sweet Pea Daycare.

- Having these limitations might be a bad idea. If there was that much concern for the use, the Commission probably should not be approving it. If the City ever had to follow through on one of these, it would be very difficult to enforce.

- The Classic Memories downtown location was a use exception, which was a similar concept in some ways. Classic Memories had billed it as a transitional use, claiming they did not expect to be there long-term and intended to retire soon. The Commission had stopped

short of incorporating that as a condition, but it did weigh into the decision. They did move out and had another location in the City.

- **Chair Klein** added another consideration was that 20 years from now a different Commission might apply this policy to every application and kick people out after 12 months.
 - He did not think this was a good policy. He understood it and the intent was great, but it was scary. The Commission was already working to get rid of holes written in the Code 30 years ago.
- Excluding this policy would not preclude the Commission from creating some transitional uses; approval criteria would be needed however.
- **Ms. Mangle** believed the issue being raised was important, but including such language in this Code section would only address conditional uses; it was a broader issue to consider. This was something to put on the list of Code fixes to keep discussing.
 - Conditional use, CSU, use exception; it was all the same question and it should be an available tool for all of them.
 - All those tools were not available to everybody now. The use exception criteria would not help something be a transitional use. Limiting it did not help, if a building was an office use, it had to be used as office and could not as a bowling alley.
- The struggle with downtown was how the City could allow for temporary uses that the City did not necessarily want to see long term and empower decision makers with the right tools to make a decision without being completely arbitrary or anticipating something that will never happen.
 - The issue was when that temporary use became successful, when it became the thing that drew people into downtown, would the City have to shut it down? Would the business have to do another land use process for something that was wildly successful?
- The occupant of that building or business would be at the whim of the Commission on a decision that was made 5 years prior and possibly by a previous Commission. That was not good policy.
 - That occupant could then move 2 blocks elsewhere, leaving that spot vacant.
- The suggested policy involved a 5- or 7-year window, not 6 months like more traditional temporary uses. There were businesses who would apply for that. It depended on the cost of real estate, their business plan, etc.
- Having a different Commission would be an issue for the business occupying the building under a time limit. When applying to have their permit continued for another 5 years, those

on the Commission who were open to the idea and approved the first permit might have changed. The new Commission might be totally against it. This could mean that the conditions had changed, but it also might mean that the decision makers' personalities had changed too.

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

Purpose Statement.

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

the Commission would go toward the one supported by the purpose statement.

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

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

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

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

- Ms. Mangle's presentation to City Council on November 16 would discuss this project in the context of other Code changes, including the Residential Design Standards Project, Natural Resource Overlay Project, the Parking Chapter Amendments, and the multi-year Code overhaul project staff was entertaining and the direction they wanted to go.

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

7.0 Planning Department Other Business/Updates

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

- She found that videotaping Commission meetings, particularly hearings, was looking more feasible than she thought. The City's contract with Willamette Falls Television, who did the Council meetings, had some capacity to add some Commission meetings. She had thought it was going to be a bigger budget concern.
- The video would be posted to the website but not broadcast on television. Videotaping would improve the audio recording and address the issues they had been having. It had not been determined whether Ms. Pinyerd would still attend meetings. With a permanent video record, typed meeting minutes may not be needed. LUBA did not require minutes, only a record of decisions. Other cities and Milwaukie's Council still needed written minutes even though they had recordings. How all the pieces would fit was open for discussion.
- In doing more worksessions and having meetings run late, she sought feedback from the

Commission about how to make the most of their time. One way to address the issue would be to move the meetings up. The Commission could change the current meeting format by starting the meetings earlier to hold worksessions first and then the regular meeting at 7:00 p.m. for example. It depended how the Commission wanted to do their work. She was open to making adjustments if the group was interested, and she welcomed any suggestions.

Discussion points from the Commission included:

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

8.0 Planning Commission Discussion Items

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

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

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

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

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

- She reported that the Jackson Street Improvement Project was delayed one month. The

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

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

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

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

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

9.0 Forecast for Future Meetings:

November 23, 2010 1. Tentatively Cancelled

December 14, 2010 1. Worksession: Wastewater Master Plan

Meeting adjourned at 9:27 p.m.

Respectfully submitted,

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

803 Jeff Klein, Chair

CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, December 14, 2010
6:30 PM

COMMISSIONERS PRESENT

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

STAFF PRESENT

Katie Mangle, Planning Director
 Susan Shanks, Senior Planner
 Brett Kelter, Associate Planner

COMMISSIONERS ABSENT

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 September 14, 2010

Commissioner Batey moved to accept the September 14, 2010, Planning Commission meeting minutes as presented. Commissioner Gamba seconded the motion, which passed unanimously.

2.2 September 28, 2010

2.3 October 12, 2010

Commissioner Batey moved to accept the September 28, 2010 and October 12, 2010 Planning Commission meeting minutes as presented. Commissioner Gamba seconded the motion, which passed unanimously.

3.0 Information Items– None.

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

5.0 Public Hearings – None.

6.0 Worksession Items

6.1 Johnson Creek Watershed Council informational briefing

Guest: Robin Jenkinson, JCWC

Robin Jenkinson, Johnson Creek Watershed Council (JCWC), distributed and briefly reviewed paper packets about the funding, structure, and activities of the JCWC, as well as the proposed Willamette Confluence Project that would be coming before the Commission for a Water Quality Resource (WQR) application. Key comments and responses to questions and remarks from the Commission were as follows:

- The goal of the proposed project was to enhance the cover and shelter within a quarter mile reach from the 17th Ave Bridge to the confluence with the Willamette River by installing engineered log jams and boulders on the exposed bedrock portions of the creek channel. The project would also enhance the 5 or 6 acres of riparian or streamside forests, which included the Klein Point portion of Riverfront Park.
- Water from the watershed area and tributaries is drawn back into the ground water by deep wells that act like stormwater cesspools, substantially reducing the volume of water entering Johnson Creek.
- The packet included the report, "State of the Watershed" which included maps showing changes in water quality, fish, bacteria, etc. She noted that DDT levels in Johnson Creek have dropped dramatically since the late 1980s. Bacteria levels were continuing to drop as more sewer systems are installed.
- The JCWC was one of about 30 nonprofit watershed councils in Oregon. Some funding comes from lottery funds designated for fish and wildlife purposes, which paid for one full-time staff member, Executive Director Matt Clark. Grant money was used for such things as Ms. Jenkinson's staff time and restoration projects. Jurisdictional financial support was also received from the cities of Milwaukie, Gresham, Portland, and Clackamas and Multnomah County Conservation Districts, and was typically tied to specific tasks. Money was also raised by Friends of Johnson Creek, fundraising activities, and private contributors.
- Substantial issues exist on Johnson Creek in the Milwaukie area, such as having septic tanks and the concrete manufacturing plant right on the creek. With so much industry on the creek, enhancing habitat at the mouth seemed futile compared to more systemic problems.
 - PCC Structurals had been one of the main water polluters due to hot water being put into Johnson Creek. The company has changed that practice as part of their DEQ permit and employees attend many JCWC events, providing opportunities to add more Johnson

Creek advocates and spread the word about improving the creek.

- JCWC worked with a lot of private landowners on backyard habitat enhancement projects and has coordinated a lot of monitoring, such as for bacteria. JCWC was submitting a DEQ 319 Grant proposal to do some DNA fingerprinting to help determine where fecal coliforms were coming from; several theories existed.

- The Johnson Creek Watershed Restoration Project Portal would soon be available through a tool called the Conservation Registry where all completed, underway, and priority projects in the basin were cataloged.

- This tool allowed people to do all sorts of searches and quick reports on how much had been invested within the different jurisdictions, the number of projects, partners, who was funding and what project types were being done.

- As far as concerns regarding homeless people camping in the project area, JCWC was working with the City of Milwaukie on vegetative management. All the blackberries would be cleared out this next year, creating a much more exposed area, which may deter camping. There had not been any confrontations or problems with the homeless people, who were mostly excited about the habitat enhancements.

- The re-vegetation plan included native riparian trees and shrubs and mostly followed the Riverfront Park planting plan. Some of those suggested plants did meet the wildlife easement requirements.

- The City has its own stormwater management permit and had adopted Portland's Stormwater Management Manual. It only addressed private ownership and stormwater runoff to the creek from industries when they actually did something to trigger a WQR review, such as redoing a parking lot.

- The City was working on incentives for residential property owners to deal with stormwater onsite, rather than just letting it run to the street.

- The JCWC would use the downed Douglas Firs from Elk Rock Island for the confluence project. The logs were currently tied up on shore on Gary Klein's property.

- While Milwaukie bay is crucial to salmon habitat, JCWC did not have a position, per se, on recreational boating activities on the bay. JCWC is a really big supporter of the Riverfront Park because half of their mandate is outreach and connecting with citizens about why these streams and rivers are important.

- The FishAmerica Foundation, which was fisherman-oriented, actually helped fund the project because the boat ramp was in Riverfront Park.

- JCWC would be submitting a Metro Capital Grant application to help launch the construction of Riverfront Park, given the interpretive overlook proposed on Klein Point. The more than \$200,000 of construction funding JCWC secured for the salmon habitat enhancement would be used as match in that grant proposal.

Mr. Kelter stated the Commission hearing would be held in April with the goal of having all City approvals in time for the in-water work window beginning on July 15, 2011.

6.2 Summary: Land Use and Development Review Process Tune-up Project draft code check-in

Staff Person: Susan Shanks

Susan Shanks, Senior Planner, provided a brief update on the status of the project, noting the following key comments:

- The official public draft of the Code amendments was complete and available online, meeting DLCD requirements for public notice. The Commission hearing date was scheduled January 25, 2011.
- With the restructuring of Title 19, and in an effort to save paper, a two-page table was used to indicate all the substantive policy changes rather than an underlined, strikeout version showing the amendments. The resulting document was 71 pages as opposed to 300+ pages.
- A separate, 20-page commentary document described the Code amendments and the differences between the existing and proposed Code. This document was written in more common as opposed to legal language, making it easier for the public to digest. Reading the commentary would provide a good understanding of the proposed changes; further detail could be derived from the actual Code.
- A 1-page project overview document naming the key points of the project was available.
- An email was sent to the subcommittee members stating that a couple things had been revised in the course of creating the draft for DLCD. These were also highlighted in the email sent to the Commission; anyone with comments could contact Ms. Shanks.

Ms. Mangle encouraged the Commissioners to read as much of the draft as possible, but especially the Procedures Chapter 19.1000, which included information on how public hearings were run, appeals, permit time limits, and other things that affect the Commission's role.

- Staff welcomed any advice or suggestions about how to communicate the Code amendment project with the public. Staff would send emails to do some targeted outreach and have cards at the counter for people considering development projects.
- A blurb would be put in *The Pilot*, pointing people to the website.
- One more worksession and subcommittee meeting could be held before the Commission hearing to finalize any last minute items.
- Staff was still researching with legal counsel whether Measure 56 notices would be required for property owners with nonconforming or conditional uses.

7.0 Planning Department Other Business/Updates

7.1 PC Notebook Update pages

Ms. Mangle stated the Commissioners could bring their zoning binders in to be updated by Marcia Hamley. The main addition was the new Parking Chapter adopted in April.

- She added that a good worksession was held on the Residential Development Standards project last month. The project addressed development policies for single- and multi-family housing and was expected to take about a year. The consulting budget was only available until July, and City staff would finish it from then. Any Commissioners wanting to be on the subcommittee needed to sign up by January. A smaller group was preferred that included people familiar with the public process.

Chair Klein volunteered to be a part on the subcommittee and encouraged Commissioner Churchill to also be involved at some level because of his background and work expertise. Commissioners Gamba and Wilson also expressed interest.

8.0 Planning Commission Discussion Items

Commission Batey asked if the Jackson Street Improvement Project had done what was promised in terms of getting buses off and adding parking to SE 21st Ave. She also inquired about the status of the '76 gas station sign.

- **Ms. Mangle** explained the two remaining bus layovers on SE 21st Ave would ultimately be removed. Bus layovers had been removed from Jackson St and was now all parking; no striping had been done yet due to the weather. Parallel parking would be converted to angled parking in front of City Hall, resulting in an additional 4 spaces. She described how the design provided for additional spaces and would email how many total spaces the

project would add.

- Judge Gray found the '76 station in violation shortly after the Commission meeting. Sentencing was delayed until May 2011 to allow time to pursue the Code change as a way to resolve the situation. Jim Crawford, the Applicant's representative, realized it was their job to craft the draft amendment to the Code for consideration by the Commission. If a suitable set of amendments could be drafted, the City would take the amendments through the adoption process. Mr. Crawford sent the first draft of the amendments to Mr. Marquardt yesterday. If acceptable, they would probably be brought to the Commission in February.

9.0 Forecast for Future Meetings:

- | | |
|------------------|--|
| January 11, 2011 | 1. Extension Request for FP-10-03 Howe St. |
| | 2. Worksession: Natural Resources Overlay project briefing |
| | 3. Worksession: Residential Development Standards project |
| | 4. Annual Election of Officers |
| January 25, 2011 | 1. Public Hearing: Development Review Process Tune-Up Amendments |
| | 2. Worksession: Annual preparation of Commission work plan |

Meeting adjourned at approximately 7:39 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
From: Susan P. Shanks, Senior Planner
 Ryan Marquardt, Associate Planner
 Marcia Hamley, Administrative Specialist II
Date: January 18, 2011, for January 25, 2011, Public Hearing
Subject: **File:** ZA-10-02 & CPA-10-03
 File Type: Zoning Ordinance Amendment and Comprehensive Plan Amendment
 Applicant: Katie Mangle, Planning Director, City of Milwaukie

ACTION REQUESTED

Initiate the proposed amendments and recommend that City Council adopt the proposed amendments to Milwaukie Comprehensive Plan Chapters 1 and 2; Milwaukie Municipal Code Title 19 Zoning Ordinance, Title 17 Land Division Ordinance, Title 14 Sign Ordinance; and related amendments to Titles 2, 3, 12, 13, and 18 with the recommended findings in support of approval (see Attachment 1 and Exhibits A - D).

BACKGROUND INFORMATION

In 2009 the City received a Code Assistance grant from the Oregon Transportation and Growth Management (TGM) Program that partially funded a project to review and overhaul the policies and procedures that govern the City's land use and development review system. This project has been an opportunity for the City to address some longstanding problems. Most of the City's policies and procedures are located in the zoning code, which is Title 19 of the Milwaukie Municipal Code, but some are located in the Comprehensive Plan and elsewhere in the Milwaukie Municipal Code. As a result, the proposed code amendments include both code and comprehensive plan text amendments and involve a complete restructuring of the zoning code to provide a better vehicle for implementing the proposed improvements.

A. History of Prior Actions and Discussions

- **December 2010:** Staff updated the Planning Commission on the status of the Land Use and Development Review Process Tune-Up Project and distributed the full

package of draft code amendments.

- **November 2010:** Briefing #6 on Land Use and Development Review Process Tune-Up Project provided an overview of all proposed procedural improvements and policy changes, with a focus on amortization of nonconforming uses and expiration of land use approvals.
- **November 2010:** 2-hour discussion with Planning Commission Subcommittee.
- **October 2010:** Briefing #5 focused on conditional uses, amendments to maps and ordinances, and development review.
- **October 2010:** 1-1/2 hour discussion with Planning Commission Subcommittee.
- **September 2010:** Briefing #4 focused on variances and nonconforming situations.
- **August 2010:** Briefing #3 focused on variances and nonconforming situations.
- **July 2010:** Briefing #2 focused on time limits and extensions of land use approvals.
- **July 2010:** 1-hour discussion with Planning Commission Subcommittee.
- **May 2010:** Briefing #1 focused on project goals and the City's code history and current review procedures.
- **March 2010:** The Commission reviewed the intergovernmental agreement between the City and the State of Oregon.
- **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.

B. Code Amendment History

Development and land use review is a basic and important function of the City. It provides certainty to property owners, protects shared resources, allows community oversight over proposed development, and, if efficiently performed, can facilitate economic development. This function is partly driven by state and regional requirements, but mostly by local policies and procedures in the zoning code and Comprehensive Plan. Most of the provisions in Milwaukie's zoning code were adopted in 1969 or 1975.

Since that time, the City has contemplated or adopted many zoning code amendments to either address specific urgent issues or comply with regional requirements. With the exception of the amendments adopted to implement the Downtown Framework Plan, the adopted amendments were usually inserted into the existing text of the zoning code. Given the volume, complexity, and interrelatedness of the provisions in the zoning code, this approach has not always served Milwaukie well (even when the targeted amendments were necessary and appropriate). Gaps and/or conflicts within and between provisions have been inadvertently created, which has led to confusion and inefficiencies. Moreover, deferred maintenance has resulted in an outdated zoning code that does not reflect advancements in planning, technology, and Oregon law and that lacks some basic tools that staff and the community need to properly guide and regulate development.

The City's zoning code has long been in need of a more comprehensive tune-up to address the problems created by past piecemeal efforts and to bring the zoning code into the 21st century. Recognizing this need, City Council directed staff in 2007 to engage in a multi-year zoning code improvement effort. Though an ideal approach would be a comprehensive review and overhaul of the zoning code, such a project would have cost several hundred thousand dollars and been out of Milwaukie's reach. Instead, the Planning Department, with concurrence from the Planning Commission and City Council, has developed a prioritized code improvement work plan to which the department has dedicated \$20-50,000 per year and an average of 0.7 FTE since 2007. The 2009 TGM grant has provided additional resources (\$50,000) for consultant specialists to assist City staff with research and code writing. The Land Use and Development Review Tune-Up project is but one in a series of projects that the Planning Department has undertaken to improve the zoning code.

C. Code Amendment Proposal

Review procedures provide the basic framework for how the City conducts land use and development review. They determine what kinds of projects trigger land use review, who receives notices about hearings and decisions, when the City has to make a land use decision, and who makes the final decision (e.g. Planning Director, Planning Commission, or City Council). The purpose of the proposed code amendments is to modernize and improve the effectiveness of the City's land use and development review process to provide fair and timely review of development proposals, allow for meaningful public involvement, and facilitate quality development.

The proposed amendments were drafted with the following values in mind:¹

- Effectiveness – focus limited City resources on solving problems, eliminating ineffective or outdated steps and regulations
- Responsiveness – provide predictable ways for people to participate in decisions, and decision criteria that reflect the long term goals in the Comprehensive Plan
- Fairness – ensure that decisions are made appropriately (staff make administrative decisions, while the Planning Commission has more discretion), ensure that similar applications are held to similar review processes
- Efficiency – simplify review procedures as much as possible, while still maintaining responsiveness and flexibility
- Understandability – organize the regulations so people can find what they need, reduce confusing language, and fill gaps that create confusion
- Predictable Flexibility – recognize the need for judgment, but provide defined ranges of flexibility and a clear process for seeking more flexibility

The proposed amendments are consistent with these values and were prepared with extensive input from the Planning Commission (6 in-depth work sessions) and a 2-person subcommittee of the Planning Commission (3 meetings). In November 2010, staff posted project information on the City's website, including draft chapters, and has kept it updated with current information

¹ For more discussion of why these values should form the basis for a modern zoning code, see chapter 4 from *A Better Way to Zone* by Donald L. Elliott. Staff recommends this book as a great overview of what zoning is, how it originally evolved as a way to solve problems, and how it can change to address the needs of 21st century cities.

and drafts as they have become available. Staff notified the Neighborhood District Associations (NDA) about the project at a special meeting of the NDA leadership and land use committee members in November 2010, updated them in December 2010 via e-mail, and plans to brief them at their regularly scheduled meeting in January 2011. Staff also notified other affected agencies and stakeholders about the project in January 2011, including a mailing to all property owners in the city (see Attachment 5).

While the proposed amendments are located in several titles of the municipal code, the most substantive amendments are proposed to the following specific code provisions:

- Nonconforming Uses and Development (existing Chapter 19.800)
- Amendments to Maps and Ordinances (existing Chapter 19.900)
- Code Interpretations and Director Determinations (existing sections in Chapters 19.1000 and 19.800)
- Conditional Uses (existing Chapter 19.600)
- Development Review (NEW Application)
- Extensions to Expiring Approvals (NEW Application)
- Modifications to Existing Approvals (NEW Application)
- Variances (existing Chapter 19.700)
- Review Procedures (existing Chapter 19.1000)

Additionally, amendments are proposed to the following two Comprehensive Plan chapters to coordinate with the proposed amendments to the zoning code.

- Chapter 1 Citizen Involvement
- Chapter 2 Plan Review and Amendment Process

The documents attached to this staff report show and describe the amendments in more detail.

Attachment 1 shows the proposed amendments in detail (specifically Exhibits B, C, and D).

Attachment 2 explains the proposed amendments in layperson language.

Attachment 3 highlights key policy and procedural changes by topic.

Attachment 4 highlights key policy and procedural changes within the context of the review process.

Attachment 5 explains how the proposed amendments may affect property owners.

The problems addressed by the proposed amendments will likely generate a small amount of new revenue and result in some cost savings through various process improvements, examples of which are as follows:

- Elimination of the requirement to advertise all land use hearings in the newspaper would save the City roughly \$3,000/year. Staff believes that this type of notice provides few people with the information that they actually need to understand and/or get involved in the land use review process. The proposed amendments would instead give the Planning Director discretion to use the most effective and appropriate means of advertisement available depending on the nature of the development being proposed.
- Elimination of the requirement to hold a City Council hearing for certain types of zone change requests (i.e. those involving 5 or fewer properties that do not also include a Comprehensive Plan map change request) would save staffing costs associated with a

second public hearing. Staff believes that these kinds of requests are clearly quasi-judicial in nature and are most appropriately decided by the Planning Commission. The proposed amendments would allow for the appeal of these types of decisions to Council.

- Clarification of existing procedures and the addition of new procedures would eliminate time-consuming debates amongst staff and between staff and the City Attorney over which process to use or which steps to take in any given situation. Clarification of existing procedures would also eliminate procedural oversights that have led to delays, which, in turn, have required additional staff time to rectify and/or triggered additional public notice costs.
- Addition of three new land use applications (i.e. Development Review, Extensions to Expiring Approvals, and Modifications to Existing Approvals) and the expansion of two (i.e. Director Determinations and Conditional Uses) would allow the City to collect an application fee commensurate with the development proposal or request being made and staff time required. These fees would be set by the existing Fee Schedule and range from \$150 to \$1700 depending upon the level of review (i.e. ministerial or quasi-judicial) that is triggered by the proposal.

D. Code Amendment Proposal for Council Hearing

The Planning Commission has reviewed all proposed policy and procedural changes that are substantive in nature and provided guidance to staff throughout the drafting of the proposed amendments. Staff's recommendation is for the Planning Commission to recommend adoption of the proposed amendments with the two changes proposed by staff that are summarized in Attachment 6 and in the Conclusions section of this report. Staff will use Attachment 6 to track any additional changes that the Commission may propose at its hearing on the amendments.

Given the extensive scope of the proposed amendments, staff is recommending that the amendments, if adopted, become effective 60 days from the date of adoption. This is a longer effective timeframe than is typical. However, the additional time is needed in this case to adequately prepare for the level of change that the amendments will have on the City's existing forms, documents, and processes.

CONCLUSIONS

Staff's recommendation to the Planning Commission is as follows:

Vote to recommend that City Council adopt the draft ordinance and related exhibits as proposed, with the follow modifications:

- Add a fifth review type to Chapter 19.1000 that mirrors the City's current major quasi-judicial review process, identify this review type as Type IV, rename the proposed Type IV review type as Type V (i.e. legislative applications), and update other code sections as needed.

The current proposal contains 4 review procedures for processing land use applications. The existing code currently has 5 review procedures. It was initially thought that eliminating the fifth review type, i.e. major quasi-judicial review, would streamline the City's review process. However, as staff has developed and further refined the proposed review procedures chapter (Chapter 19.1000), it has become clear that eliminating the major quasi-judicial review process has not simplified anything. It has merely resulted in the shifting of the review procedures specific to major quasi-judicial review into the legislative review

process, which has created a bifurcated and overly-complex legislative review process. Staff proposes to revert to the City's existing approach of having five separate and distinct review types. This would result in no new or different procedures than those currently represented in the proposed amendments. It would simply create a separate section for them.

- Modify Section 19.902 to allow Comprehensive Plan map amendments to be evaluated through either the major quasi-judicial review process or the legislative review process depending upon the geographic scope of the map amendments.

The current proposal provides for legislative review of all Comprehensive Plan map amendments (Section 19.902). The existing code provides for major quasi-judicial review of all Comprehensive Plan map amendments. Staff now believes that it would be more appropriate, and also more consistent with the proposed approach to zoning map amendments, to have the level of review dependent upon the geographic scope of the map amendment.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposed amendments are subject to the following provisions of the Milwaukie Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code (MMC), and the Milwaukie Comprehensive Plan (MCP).

- Chapter MMC 19.900 Amendments
- Subsection MMC 19.1011.5 Legislative Review
- MCP Chapter 2 Objective 1 Amending the Plan

The proposed amendments are subject to legislative review, which requires both the Planning Commission and City Council to consider whether the proposal complies with the code sections shown above. For legislative actions, the Planning Commission assesses the application against the review criteria, evaluates testimony and evidence received at a public hearing, and makes a recommendation to City Council. City Council will hold another public hearing to consider the Commission's recommendation, evaluate any additional testimony and evidence, and make the final decision on the proposal.

The Planning Commission has the following decision-making options:

1. Forward a recommendation to City Council to approve the proposed amendments and ordinance.
2. Forward a recommendation to City Council to approve the proposed amendments and ordinance with modifications.
3. Continue the hearing to further evaluate the proposed amendments and ordinance.
4. Deny the proposed amendments and ordinance. This would have the effect of deciding to continue to implement the code in its current state.

Because this proposal is a legislative action, there is no deadline by which the City must make a final decision.

COMMENTS

Staff has received a few phone calls about the proposed amendments and what they would mean to individual property owners, but no formal comments have been submitted as of the writing of this staff report. Staff will continue to collect comments. Any comments received prior to 3pm on the day of the hearing will be provided to the Commission before the hearing.

ATTACHMENTS

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

1. Draft Ordinance (all attached)
 - Exhibit A: Recommended Findings in Support of Approval
 - Exhibit B: Proposed Amendments (Zoning Ordinance Renumbering)
 - Exhibit C: Proposed Amendments (Underline/Strikeout Version)
 - Exhibit D: Proposed Amendments (Clean Version)
2. Proposed Code Amendment Commentary (attached)
3. Overview of Proposed Amendments by Topic
4. Overview of Proposed Amendments within Review Process
5. Property Owner Notification (attached)
6. List of Proposed Changes to Proposed Amendments (attached)

The proposed amendments and other project documents are available online at:
<http://www.ci.milwaukie.or.us/planning/land-use-and-development-review-code-tune-project>

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE COMPREHENSIVE PLAN CHAPTER 1 AND 2, AND THE MILWAUKIE MUNICIPAL CODE TITLE 2 ADMINISTRATION AND PERSONNEL; TITLE 3 REVENUE AND FINANCE; TITLE 12 STREETS, SIDEWALKS, AND PUBLIC PLACES; TITLE 13 PUBLIC SERVICES; TITLE 14 SIGN ORDINANCE; TITLE 17 LAND DIVISION ORDINANCE; TITLE 18 FLOOD HAZARD REGULATIONS; AND TITLE 19 ZONING ORDINANCE, TO REVISE AND IMPROVE THE PROCESS FOR REVIEW AND APPROVAL OF LAND USE APPLICATIONS AND DEVELOPMENT PERMITS. LAND USE FILE ZA-10-02 AND CPA-10-03.

WHEREAS, the City of Milwaukie desires to promote smart growth and redevelopment, and maintain a clear, efficient, and up to date process for the review of land use applications and development permits; and

WHEREAS, the City conducted a Smart Growth Code Assessment in 2009, which identified areas in the Municipal Code that present obstacles to smart development and create inefficiencies in the City's land use and development review process; and

WHEREAS, the City Council approved Resolution #27-2010 to execute an intergovernmental agreement with the State of Oregon's Transportation Growth Management Program providing resources to the City to address problems identified by the Smart Growth Code Assessment; and

WHEREAS, the City has prepared amendments to the Comprehensive Plan and Municipal Code that address problems identified by the Smart Growth Code Assessment; and

WHEREAS, all property owners were notified of the amendments and opportunity for public input has been provided at multiple Planning Commission meetings and City Council meetings and through the City website; and

WHEREAS, the Planning Commission and City Council have held duly advertised public hearings on the amendments, with notice provided per the requirements of the Milwaukie Municipal Code and Oregon Revised Statutes; and

WHEREAS, the City Council finds that the amendments will result in an improved land use application and development permit review process and regulations that are more amenable to the principles of smart growth and redevelopment;

WHEREAS, the City Council finds that the amendments are extensive in scope and require 60 days from the date of adoption to put into effect.

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

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

Section 2. Reorganization. Chapters and sections within Title 19 Zoning Ordinance are renumbered as described in Exhibit B.

Section 3. Amendments. The Comprehensive Plan Chapter 1 and Chapter 2, and Milwaukie Municipal Code Title 2 Administration and Personnel; Title 3 Revenue and Finance; Title 12 Streets, Sidewalks, and Public Places; Title 13 Public Services; Title 14 Sign Ordinance; Title 17 Land Division Ordinance; Title 18 Flood Hazard Regulations; and Title 19 Zoning Ordinance are amended as described in Exhibit B (renumbering table for Title 19), Exhibit C (underline/striekout version), and Exhibit D (clean version).

Section 4. Effective Date. The amendments shall become effective 60 days from the date of adoption.

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

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

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Document6 (Last revised 09/18/07)

**Recommended Findings in Support of Approval
Land Use File ZA-09-02 & CPA-10-03**

1. The City of Milwaukie proposes to amend various land use and development review regulations that are contained in Title 14 Sign Ordinance, Title 17 Land Division Ordinance, and Title 19 Zoning Ordinance of the Milwaukie Municipal Code (MMC) and Chapters 1 and 2 of the Milwaukie Comprehensive Plan (MCP). Minor code amendments are also proposed to Titles 2, 3, 12, 13, and 18. The land use applications for these amendments are ZA-10-02 and CPA-10-03.
2. The purpose of the proposed code amendments is to modernize and improve the effectiveness of the City's land use and development review process to provide fair and timely review of development proposals, allow for meaningful public involvement, and facilitate quality development. The majority of the amendments are to Title 19, with substantive amendments proposed to the following specific provisions:
 - Nonconforming Uses and Development (existing Chapter 19.800)
 - Amendments to Maps and Ordinances (existing Chapter 19.900)
 - Code Interpretations and Director Determinations (existing sections in Chapters 19.1000 and 19.800)
 - Conditional Uses (existing Chapter 19.600)
 - Development Review (NEW Application)
 - Extensions to Expiring Approvals (NEW Application)
 - Modifications to Existing Approvals (NEW Application)
 - Variances (existing Chapter 19.700)
 - Review Procedures (existing Chapter 19.1000)

Additionally, amendments are proposed to the following two MCP chapters to coordinate with the proposed amendments to Title 19.

 - Chapter 1 Citizen Involvement
 - Chapter 2 Plan Review and Amendment Process
3. The proposed amendments are subject to the following provisions of the MMC and MCP:
 - MMC Chapter 19.900 Amendments
 - MMC Subsection 19.1011.5 Legislative Actions
 - MCP Chapter 2 Objective 1 Amending the Plan
4. Sections of the Milwaukie Municipal Code or Comprehensive Plan not addressed in these findings are found to be not applicable to the decision on this land use application.
5. Public notice was provided in accordance with MMC Subsection 19.1011.5 Legislative Actions.
6. Compliance with MMC Chapter 19.900 Amendments:

- A. MMC Section 19.901 requires that amendments to the Milwaukie Zoning Ordinance be initiated by the City Council, Planning Commission, or by a property owner.

The amendments are proposed by the City of Milwaukie and will be initiated by the Planning Commission prior to the first public hearing. The Planning Commission finds that this criterion is met.

- B. MMC Section 19.902 Amendment Procedure

- i) MMC Subsection 19.902.1.A requires that proposed amendments be heard at a public hearing and follow the procedures outlined in MMC Subsection 19.1011.5 Legislative Actions.

The Planning Commission will hold a public hearing on the proposed amendments on January 25, 2011. A public hearing before City Council is tentatively scheduled on March 1, 2011. Public notice was provided in accordance with MMC Subsection 19.1011.5. The Planning Commission finds that this criterion is met.

- ii) MMC Subsection 19.902.1.B establishes standards for providing notice to Metro of any proposed amendments to the City's Comprehensive Plan or Zoning Ordinance.

Metro was provided notice of the proposed amendments on January 14, 2011, which meets the 45-day notification requirement. An analysis demonstrating compliance with the Metro Urban Growth Management Functional Plan will be sent to Metro no later than fourteen days prior to the final City Council hearing on the proposed amendments. The Planning Commission finds that this criterion is met.

- iii) MMC Subsection 19.902.1.D requires that the Planning Director forward the Planning Commission's recommendation to City Council within forty days of the final Planning Commission hearing on the proposed amendments.

If the Planning Commission makes a recommendation on January 25, 2011, the Planning Director will forward the Commission's recommendation to the Council on or before March 1, 2011, which meets the 40-day requirement. The Planning Commission finds that this criterion is met.

- C. MMC Subsection 19.904.1 requires that proposals for amendments to the Milwaukie Zoning Ordinance provide written evidence that the following requirements are satisfied:

- i) Applicable requirements of MMC Section 19.1003, which specify the form of petitions, applications, and appeals.

City staff have submitted an application on the prescribed form. Because no development is proposed, the other portions of MMC Section 19.1003 are not applicable. The Planning Commission finds that this requirement is met.

- ii) Reasons for requesting the proposed amendments.

The proposed amendments are needed to modernize and improve the effectiveness of the City's land use and development review process. This process is a basic and important City function that is meant to provide fair and timely review of development proposals, allow for meaningful public involvement, and facilitate quality development. The amendments are meant to ensure that the code remains current with best professional practices, complies with Metro and State requirements, and

reflects the community's vision for how the land use and development review process should work. The proposed amendments are intended to create a smart, flexible, and local code.

A smart code is one that contains everything it should and nothing it shouldn't. Its structure and procedures are easy to understand and follow, serving to help property owners and developers effectively manage their development projects. Its application approval criteria allow for an appropriate amount of analysis and discretion consistent with an application's level of review.

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

A local code is one that provides for meaningful public involvement in a way that reflects Milwaukie's character and that results in desired development consistent with the community's vision in the Comprehensive Plan.

The Planning Commission finds that this requirement is met.

- iii) Explanation of how the proposed amendments are consistent with other provisions of this title.

The amendments to Titles 2, 3, 12, 13, 14, 17, 18 are proposed so as to be consistent with the amendments to Title 19. They are intended to ensure that all internal code references are consistent and accurate, all new and existing terms are clearly defined, and all affected code sections are appropriately located. The Planning Commission finds that this requirement is met.

- iv) The approval criteria of MMC Section 19.905.

The applicable approval criteria of MMC Section 19.905 are addressed below.

- D. MMC Section 19.905 contains the approval criteria for amendments to the Milwaukie Zoning Ordinance.

- i) The proposed amendments must conform to applicable MCP goals, policies, and objectives and be consistent with City ordinances, Metro Urban Growth Management Functional Plan, and other applicable regional policies.

Compliance with Milwaukie Comprehensive Plan (MCP)

Chapter 1 Goal Statement: To encourage and provide opportunities for citizens to participate in all phases of the planning process, to keep citizens informed and to open lines of communication for the sharing of questions, problems and suggestions regarding the Comprehensive Plan and land use regulations.

The proposed amendments update, streamline, and strengthen the City's citizen involvement policies and procedures in a number of ways.

- They update the City's MCP citizen involvement policies to reflect advancements in technology (e.g. internet) and the breadth of communication strategies available to staff (e.g. mailings, meetings, television, newsletters, etc.) for involving citizens in the land use process. The existing policies are outdated and narrow in their approach to involving citizens in a meaningful way.

- They streamline the City's MCP citizen involvement procedures by moving them to the Zoning Ordinance so that all the legislative and quasi-judicial procedures for amending the Zoning Ordinance and Comprehensive Plan are in one place and are consistent with one another. Only the procedures are being moved; the updated citizen involvement policies will remain in the Comprehensive Plan.
- They strengthen the City's MMC citizen involvement procedures by codifying and expanding existing land use application referral practices to neighborhood district associations so that they are notified about and given as much time as possible to review and comment on development proposals in their neighborhood.
- They improve the City's MMC citizen involvement procedures by requiring more and better signage on properties where development is being proposed.
- They strengthen the City's MMC involvement procedures by providing the Planning Director with guidelines for involving the public in the legislative application review process.
- They augment the City's MMC citizen involvement procedures by adding a formal process for notifying neighbors and NDAs about the modification or extension of certain kinds of land use approvals.
- They augment the City's MMC citizen involvement procedures by adding land use review and public notice for certain kinds of development proposals that currently only require building permit approval and no public notice.

Chapter 2 Goal Statement: Establish a Plan review and amendment process as a basis for land use decisions, provide for participation by citizens and affected governmental units, and ensure a factual base for decisions and actions.

- The proposed amendments move the MCP plan amendment approval criteria to the Zoning Ordinance so that all the legislative approval criteria and procedures for amending the Zoning Ordinance and Comprehensive Plan are in one place and are consistent with each other.

Chapter 4 Goal Statement for Residential Land Use and Housing Element: To provide for the maintenance of existing housing, the rehabilitation of older housing and the development of sound, adequate new housing while preserving and enhancing local neighborhood quality and identity.

- The proposed amendments continue to allow alterations to existing nonconforming and conforming residential structures through an updated variance approval process that is designed to minimize impacts on neighbors while allowing for context-sensitive home improvements. The updated variance process is also more equitable for property owners and more efficient for staff to implement than the existing code provisions for home improvement exceptions and alterations to nonconforming structures.

Chapter 4 Objective for Residential Land Use and Housing Element: To utilize lands in the City according to their relative measure of buildability.

- The proposed amendments remove obstacles to reasonable development on properties with unusual characteristics or physical constraints through an updated variance approval process.

Compliance with City Ordinances

These findings demonstrate compliance with all applicable City ordinances.

Compliance with Functional Plan

As required by Metro Code Section 3.07.820.A, the City provided notice of the proposed amendments to Metro's Chief Operating Officer on January 14, 2011. The City will submit a report that demonstrates compliance with all applicable titles of the Metro Functional Plan at least 15 days prior to the City Council hearing on the proposed amendments.

The Planning Commission finds that this criterion is met.

- ii) The anticipated development must meet the intent of the proposed zone.

The proposed code amendments are legislative in nature and do not involve a specific development proposal in a particular zone. The Planning Commission finds that this criterion is not applicable.

- iii) The proposed code amendments will meet or can be determined to reasonably meet applicable regional, state, and federal regulations.

The proposed amendments will comply with all applicable regional and state regulations that apply to the land use and development review process. The proposed amendments will continue to comply with annexation processing requirements per Metro Chapter 3.09 and Oregon Revised Statutes (ORS) Chapter 222, and they will bring the City into compliance with ORS Chapters 197 and 227 regarding the processing of land use applications.

In addition to the ORS, one of the State's planning goals directs local jurisdictions to provide opportunities for citizen involvement throughout the planning process. The proposed amendments strengthen, clarify, and codify the City's policies and requirements for citizen involvement. Another State planning goal directs local jurisdictions to adopt implementing ordinances that conform to their comprehensive plan. These findings demonstrate that the proposed amendments comply with the Milwaukie Comprehensive Plan.

The Planning Commission finds that this criterion is met.

- iv) The proposed code amendments demonstrate that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area.

The proposed code amendments are legislative in nature and do not involve a specific development proposal at a particular site. The Planning Commission finds that this criterion is not applicable.

- v) The proposed code amendments are consistent with the functional classification, capacity, and level of service of the transportation system.

The proposed code amendments are legislative in nature and do not involve a specific development proposal at a particular site. The Planning Commission finds that this criterion is not applicable.

7. Compliance with MMC Subsection 19.1011.5 Legislative Actions:

- A. Public Notification. Publish a notice of a hearing once each week for two consecutive weeks in a newspaper of general circulation in the city. The second publication shall not be less than five days prior to the date of the hearing.

The City has provided the required published notice. The Planning Commission finds that this requirement is met.

- B. Decision. The Planning Commission shall conduct a public hearing and shall make a decision based on compliance with the applicable goals and policies of the MCP. The Planning Commission shall prepare a recommendation to the City Council. If the Commission approves the proposal, a report and recommendation, including findings and conclusions, shall be forwarded to Council. The City Council shall conduct a public hearing.

The Planning Commission will conduct a public hearing on January 25, 2011 and prepare a recommendation to City Council at that hearing or at a subsequent hearing. If the Planning Commission recommends approval, City Council will review their recommendation at a public hearing. The Planning Commission finds that this requirement is met.

8. Compliance with MCP Chapter 2 Objective 1 Amending the Plan:

All Comprehensive Plan amendments shall meet the following criteria:

- *Public need for the change.*
- *Public need is best satisfied by this particular change.*
- *The change will not adversely affect the health, safety, and welfare of the community.*
- *Conformance with the Comprehensive Plan, its goals, policies, and spirit.*
- *Conformance with applicable Statewide Planning Goals.*
- *Consistent with Metro Growth Management Functional Plan and applicable regional policies.*

The proposed amendments to Chapter 1 of the Comprehensive Plan provide needed updates that reflect advancements in technology (e.g. internet) and the breadth of communication strategies available to staff (e.g. mailings, meetings, television, newsletters, etc.) for involving citizens in the land use process. The existing policies are outdated and narrow in their approach to involving citizens in a meaningful way.

The proposed amendments to Chapter 2 of the Comprehensive Plan serve to reinforce the separate yet related purposes of the Comprehensive Plan and Zoning Ordinance. The Zoning Ordinance is meant to implement the Comprehensive Plan. It contains the approval criteria and procedures for all land use actions governed by the policies of the Comprehensive Plan. The existing procedures in the Comprehensive Plan for amending the plan are incomplete. By referencing the Zoning Ordinance and moving the approval criteria for amending the Comprehensive Plan into the Zoning Ordinance, all of the legislative and quasi-judicial approval criteria and procedures for amending the Zoning Ordinance and Comprehensive Plan are complete and consolidated in one place for ease of use.

The Planning Commission finds that these criteria are met.

9. The proposed amendments were referred to various City departments, governmental agencies, neighborhood district associations (NDA), and stakeholders for review and

comment. They were discussed at several Planning Commission (7 work sessions) and City Council (3 work sessions) meetings and one NDA leadership meeting. Additionally, the most up-to-date draft of the proposed code amendments and commentary document was posted on the City's web site starting on December 14, 2010. Public comments received, including any City responses, are summarized in a separate attachment.

Land Use and Development Review Amendments Zoning Ordinance (Title 19) Renumbering

It is proposed to restructure the entire Zoning Ordinance in conjunction with these amendments. The following table lists the proposed and current chapter/section numbers. Additional notations indicate chapters/sections that are "new," "amended," or "repealed and replaced."

(Proposed text amendments are shown in Exhibits C and D.)

Proposed Chapter/Section Number		Current Chapter/Section Number ¹
19.100	Introductory Provisions	19.101, 19.102, 19.200, 19.1100, and 19.1200 repealed and replaced
19.200	Definitions and Measurements	
19.201	Definitions	19.103 amended
19.202	Measurements	new
19.300	Base Zones	
19.301	Residential Zone R-10	
19.302	Residential Zone R-7	
19.303	Residential Zone R-5	
19.304	Residential Zone R-3	
19.305	Residential Zone R-2.5	
19.306	Residential Zone R-2	
19.307	Residential Zone R-1	19.308
19.308	Residential-Business Office Zone R-1-B	19.307
19.309	Residential-Office-Commercial Zone R-O-C	
19.310	Downtown Zones	19.312.1-6 amended
19.311	Neighborhood Commercial Zone C-N	19.310
19.312	Limited Commercial Zone C-L	19.311
19.313	General Commercial Zone C-G	
19.314	Community Shopping Commercial Zone C-CS	19.315 amended
19.315	Manufacturing Zone M	19.314 amended
19.316	Business Industrial Zone BI	19.324
19.317	Planned Development Zone PD	19.319 amended
REPEALED		19.317 Reserved (empty)
19.400	Overlay Zones	
19.401	Willamette Greenway Zone WG	19.320 amended
19.402	Water Quality Resource Regulations	19.322 amended
19.403	Historic Preservation Overlay Zone HP	19.323 amended
19.404	Mixed Use Overlay Zone MU	19.318
19.405	Aircraft Landing Facility L-F	19.316

¹ Same as proposed chapter/section number unless otherwise noted.

Proposed Code Amendment

Proposed Chapter/Section Number	Current Chapter/Section Number¹
19.500 Supplementary Development Regulations	
19.501 General Exceptions	19.401 amended
19.502 Accessory Structures	19.402.1-2 amended
19.503 Accessory Uses	19.402.3
19.504 Site Design Standards	19.403.2-9, 11-12, and 13.B (19.403.7 amended)
19.505 Building Design Standards	19.403.10 and 13.A
19.506 Manufactured Dwelling Siting and Design Standards	19.406 amended
19.507 Home Occupation Standards	19.407
19.600 Off-Street Parking and Loading	
19.601-19.611	19.501-19.511
19.700 Public Facility Improvements	
19.701-19.709	19.1401-19.1409 (19.1403.2 amended)
19.800 Nonconforming Uses and Development	19.800 repealed and replaced
19.900 Land Use Applications	
19.901 Introduction	new
19.902 Amendments to Maps and Ordinances	19.900 repealed and replaced
19.903 Code Interpretations and Director Determinations	19.1001.4 and 19.809 repealed and replaced
19.904 Community Service Uses	19.321 amended
19.905 Conditional Uses	19.601-19.602.9 repealed and replaced
19.906 Development Review	new
19.907 Downtown Design Review	19.312.7 amended
19.908 Extensions to Expiring Approvals	new
19.909 Modifications to Existing Approvals	new
19.910 Residential Dwellings:	new introductory text
19.910.1 Accessory Dwelling Units (Type 1)	19.402.4 amended
19.910.2 Accessory Dwelling Units (Type 2)	19.602.10 amended
19.910.3 Manufactured Dwelling Parks	19.405
19.910.4 Temporary Dwelling Units	19.404 amended
19.911 Variances	19.700 repealed and replaced
19.1000 Review Procedures	19.1000 repealed and replaced
19.1100 Annexations and Boundary Changes	
19.1101-19.1105	19.1501-19.1505 amended
19.1200 Solar Access Protection	
19.1201-19.1205	19.1301-19.1305 amended

Underline/Strikeout Amendments

Comprehensive Plan

CHAPTER 1 CITIZEN INVOLVEMENT

OBJECTIVE #3—COMMUNICATION

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

Policies

1. Make planning documents available through City offices and public libraries. This includes, but is not limited to Plan inventories, planning background information, Staff reports and minutes of Planning Commission and Comprehensive Plan Review Committee meetings.
2. Keep the public informed of opportunities for involvement in land use planning using a range of available media including newspaper notices, the City website, mailings, the City newsletter, television, and meetings. ~~Advertise all public hearings regarding land use issues in the newspaper and on the local cable television station.~~
3. Seek citizens' input on major land use issues through community organizations, service organizations, interest groups, neighborhood groups, etc. Provide opportunities for citizen participation in preparing and revising local land use plans and ordinances. Provide citizen involvement opportunities that are appropriate to the scale of a given planning effort. Large area plans, affecting a large portion of community residents and groups, require citizen involvement opportunities of a broader scope than that required for more limited land use decisions. ~~Provide information concerning major land use issues by conducting one "town hall" meeting coordinated by City Staff a minimum of 10 days prior to the public hearing before the Planning Commission. Neighborhood Associations and identified community service or interest groups shall be notified of both "town hall" meetings and public hearings. A major land use change has widespread and significant impact beyond the immediate area, such as changes producing large volumes of traffic, changes in the character of the land use, or a change affecting large areas or many different ownerships.~~
4. City Staff will communicate with citizens about land use policy changes and significant development proposals through a variety of media early on and throughout the decision-making process. ~~issue a news release to local newspapers explaining upcoming issues which would result in changes to the Comprehensive Plan or its implementing ordinances prior to discussion of these issues at a public hearing.~~
5. Provide timely and adequate notice of proposed land use matters to the public to ensure that all citizens have an opportunity to be heard on issues and actions that affect them. ~~News releases and Planning Commission agendas will be provided to the City Library and community/senior center. These groups will be encouraged to include stories regarding planning issues in their newsletters.~~
6. Any citizen testifying at a public hearing regarding a land use issue will receive a copy of the outcome of the hearing and the findings and conclusions upon which the decision was based.

CHAPTER 2 PLAN REVIEW AND AMENDMENT PROCESS

OBJECTIVE #1—AMENDING THE PLAN

5. All proposed legislative Comprehensive Plan text and map amendments will be considered at advertised public hearings before the Planning Commission and City Council. ~~At least 30 days prior to a public hearing, a public notice shall be printed in a local newspaper and will appear on the public information cable television station. A second notice will appear at least ten days prior to the public hearing.~~
6. All Comprehensive Plan text and map amendments will be processed per the procedures set forth in the Zoning Ordinance. ~~If the proposed amendment is quasi-judicial, notice of the requested change will be mailed to all residents within 400 feet of the property under consideration at least 30 days prior to the public hearing. Newspaper notice in accordance with the requirements for legislative plan amendments is also required.~~
7. All Comprehensive Plan text and map amendments will be evaluated based on the criteria adopted in the Zoning Ordinance for approval of Comprehensive Plan amendments. ~~the following criteria:~~
 - ~~conformance with the Comprehensive Plan, its goals, policies, and spirit,~~
 - ~~public need for the change,~~
 - ~~public need is best satisfied by this particular change,~~
 - ~~the change will not adversely affect the health, safety, and welfare of the community,~~
 - ~~the change is in conformance with applicable Statewide Planning Goals,~~
 - ~~the change is consistent with Metro Growth Management Functional Plan and applicable regional policies.~~

Municipal Code Title 19 Zoning

Proposed text amendments are shown below within the context of the restructured/renumbered Zoning Ordinance (as proposed in Exhibit B).

Underline/strikeout formatting is used only for proposed changes to text, not for proposed renumbering. (Where noted, new or rewritten complete chapters, and some large sections, are not underlined, for better readability.)

(The complete, amended and reorganized Zoning Ordinance, as proposed, is shown in its entirety in Exhibit D.)

ENTIRE ZONING ORDINANCE

- Change "submission" to "submittal."
- Change "site plan checklist" to "site plan requirements."

CHAPTER 19.100 INTRODUCTORY PROVISIONS

[Current Sections 19.101 and 19.102, and Chapters 19.200, 19.1100, and 19.1200 repealed and replaced as Chapter 19.100. Complete chapter below—no underlining.]

19.101 TITLE

This title shall be known and may be cited as the Zoning Ordinance of the City of Milwaukie, Oregon. This title and any amendments to it shall be adopted by ordinance. Amendments to this title shall be subject to the provisions of Section 19.902.

19.102 PURPOSE

This title implements the Comprehensive Plan, which provides the policy framework within which land use and development review is conducted in the city. Amendments to the Comprehensive Plan shall be subject to the provisions of Section 19.902.

The purpose of this title is to provide for the public health, safety, and general welfare of the citizens of the City through orderly community development, including but not limited to consideration for concentration of population, economic development, limitation of dangerous, offensive, or unwholesome trades or industries, maintenance of adequate light and air, and regulation of traffic.

19.103 APPLICABILITY

This title applies to all land, uses, and development within the corporate limits of the City of Milwaukie. It does not apply to temporary events as defined and provided for in Section 11.04.

19.104 INTERPRETATION

The Planning Director shall have the authority and responsibility for interpreting all terms, provisions, and requirements of this title. Unless specifically defined in Section 19.201, words or phrases used in this title are intended to be interpreted with the meaning they have in common usage. Requests for interpretations may be made as described and provided for in Section 19.903.

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19.105 SEVERABILITY

The provisions of this title are severable. If any section, sentence, clause, or phrase of this title is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this title.

19.106 COMPLIANCE

Development may occur, a lot may be used, and a structure or part of a structure may be constructed, reconstructed, altered, occupied, or used only as this title permits. Where this title imposes greater restrictions than those imposed or required by other rules, regulations, or ordinances, the provisions of this title shall control. Where comparable provisions of this title are in conflict, the provisions that are the most restrictive shall control.

19.106.1 Land Use Approvals

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval of all required land use applications prior to establishment or construction. Table 19.901 contains a complete list of the City's land use applications and the location of the provisions that govern their submittal, review, and approval. Chapter 19.1000 contains the City's land use review procedures.

19.106.2 Permit Approvals

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval of all required development permits prior to establishment or construction.

- A. The Planning Director shall review applications for development and sign permits for compliance with applicable code provisions.
- B. The Planning Director may approve or deny applications for development and sign permits based on consistency with applicable code provisions.
- C. All development authorized by approved development and sign permits shall be in substantial conformance with plans approved by the Planning Director.
- D. Buildings for which permits have been issued shall not be occupied without prior occupancy approval in accordance with this subsection.
- E. Occupancy approvals shall not be issued until completion of final zoning inspections and issuance of notice of completion by the Planning Director. Approval criteria for issuance of notice of completion includes all of the following:
 - 1. A written statement from the applicant that all improvements have been constructed in accordance with approved plans except as modified and approved by appropriate approval authorities.
 - 2. Completion of zoning inspection by the Planning Director and confirmation that the project is in substantial conformance with approved plans.
 - 3. Payment of the final zoning inspection fee as adopted by the City Council.
- F. The Planning Director shall complete the final zoning inspection within 5 working days from receipt of the applicant's request for final zoning inspection.

19.106.3 Violations

- A. A person violating a provision of this title shall, upon conviction, be punished by imprisonment for not more than 30 days, or by a fine of not more than \$200.00, or both. A

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violation of this title shall be considered a separate offense for each day the violation continues. If the violation was of a provision that was repealed or amended, the violation shall remain a violation to the extent that it does not conform to the provisions of this title.

- B. In case a building or land is located, constructed, maintained, repaired, altered, or used in violation of this title, the building or land in violation shall constitute a nuisance, and the City may, as an alternative to other remedies that are legally available for enforcing this title, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, enjoin temporarily or permanently, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use.

19.107 ZONING**19.107.1 Zone Classifications**

For the purposes of this title, the following base zones and overlay zones are established in the City per Table 19.107.1:

Table 19.107.1 Classification of Zones	
Zone Description	Abbreviated Description
Residential	R-10
Residential	R-7
Residential	R-5
Residential	R-3
Residential	R-2.5
Residential	R-2
Residential	R-1
Residential-Business Office	R-1-B
Residential-Office-Commercial	R-O-C
Downtown Storefront	DS
Downtown Commercial	DC
Downtown Office	DO
Downtown Residential	DR
Downtown Open Space	DOS
Commercial, Neighborhood	C-N
Commercial, Limited	C-L
Commercial, General	C-G
Commercial, Community Shopping	C-CS
Manufacturing	M
Business Industrial	BI
Planned Development	PD
Willamette Greenway Overlay	WG
Water Quality Resource Overlay	NR
Historic Preservation Overlay	HP
Mixed Use Overlay	MU
Aircraft Landing Facility Overlay	L-F

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19.107.2 Zoning Map

The zones described in Subsection 19.107.1 above are displayed on a zoning map entitled "Zoning Map of Milwaukie, Oregon." The zoning map shall be dated with the effective date of the ordinance that adopted the zoning map and the effective date of the ordinance that most recently amended the map. A certified copy of the map and map amendments, shall be maintained in the offices of the City Planning Department.

19.107.3 Zoning Map Amendments

Zoning map amendments are subject to the provisions of Section 19.902. The procedures for processing a zoning map amendment application are located in Chapter 19.1000.

19.107.4 Zone Boundary Determinations

The exact location of a zone boundary shall be determined by the Planning Director where there is uncertainty, contradiction, or conflict as to the intended location of any zone boundary due to the scale, lack of detail, or illegibility of the zoning map. The determination shall be in accordance with the following guidelines:

- A. Street Lines. Where zone boundaries are shown as approximately following the centerline of a right-of-way, such centerlines shall be construed to be the zone boundaries.
- B. Lot Lines. Where zone boundaries are shown as approximately following lot lines, such lot lines shall be construed to be the zone boundaries.
- C. Water Courses. Where zone boundaries are shown as approximately following the centerline of water courses, such lines shall be construed to be the zone boundaries unless such boundaries are otherwise fixed by dimensions described elsewhere in this title.

If a property owner disagrees with the Planning Director's initial determination, a formal determination request may be made as described and provided for in Section 19.903.

19.107.5 Zoning of Lots with Multiple Zones

If a zone boundary for a base zone in Chapter 19.300 as shown on the zoning map divides a lot between 2 or more base zones, the entire lot shall be deemed to be in the base zone in which the greater area of the lot lies, provided that this adjustment involves a distance not to exceed 20 feet from the mapped base zone boundary. If an adjustment exceeds 20 feet, the regulations for the base zones shall apply to the lot as depicted on the zoning map.

19.107.6 Zoning of Annexed Areas

Land annexed to the City shall be assigned a land use and zoning designation that is consistent with the land use designations established by the Comprehensive Plan and the zones established by this title at the time of annexation. Annexations shall be adopted by ordinance pursuant to Chapter 19.1100.

19.107.7 Zoning of Public Right-of-Way

The zones applied to the public rights-of-way within the city boundaries as shown on the zoning map do not directly regulate the improvements or structures that are allowed in these rights-of-way. Improvements and structures in public rights-of-way are regulated by other rules, regulations, and ordinances maintained by the City and other road authorities, such as Chapter 19.700, Public Works Standards, and the Transportation System Plan.

CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

[Section 19.103 renumbered as 19.201 and new Section 19.202 added. Only amended text is shown below. See Exhibit D for complete chapter.]

19.201 DEFINITIONS

"Basement" means a portion of a building, not deemed a story, which has more than one-half of its interior height (but not more than 6 feet) ~~measured from finished floor to finished ceiling~~ above the adjoining ground level grade.

"Building height" means the exterior vertical measurement of a building ~~distance measured from the adjoining street centerline grade, as established by the City, to the highest point of the roof surface of a flat roof, to the deck line of a mansard roof, and to the mean height level between the eaves and ridge for a gable, hip, or gambrel roof; provided, however, that where buildings are set back from the street line, the height of the building may be measured from the average elevation of the finished grade at the front of the building.~~

"Cellar" means a room or group of rooms, usually under a building, which has more than one half of its interior height ~~measured from finished floor to finished ceiling~~ below the average grade of the adjoining ground.

"Contract purchaser" means the party identified as the buyer in a land contract which is in force and is recorded with Clackamas County.

"Discontinued or abandoned use" means a use that is no longer in operation. A use shall be considered discontinued or abandoned upon the first day that any of the following events has occurred: (1) on the date the use physically vacates the site, (2) on the date the use ceases to be actively involved in the activity, (3) on the date of termination of any lease or contract under which the use has occupied the land, or (4) on the date a request for final reading of water and power meters is made to the applicable utility districts.

"Dwelling unit," "Accessory dwelling,":

"Type 1 accessory dwelling" means an accessory dwelling unit not less than 225 square feet net gross-floor area and not more than 600 square feet net gross-floor area and meeting the requirements of Subsection 19.910.1. For the purpose of this chapter, net gross-floor area is measured from the inside face of walls enclosing the unit including all storage space, closets, halls, stairwells, and rooms.

"High-impact nonconforming uses" means any use that is a nonconforming high-impact commercial business in any zone or any use that is a nonconforming industrial use in any zone. Nonconforming uses are defined as those uses that do not conform to the City's current land use ordinances either because they were established prior to the enactment of City ordinances governing those uses or because the uses conformed at the time they were established but applicable City ordinances have since changed. High-impact commercial businesses are defined in this section.

"Lot coverage" means the footprint of a building(s) ~~or buildings~~ on a lot, measured from the outermost projection of the building(s) structure, expressed as a percentage of the total lot area.

"Low-impact nonconforming uses" means any use that is a nonconforming residential use in any zone.

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“Minimum vegetation” means the area of a lot that supports vegetation, including planting areas under roof eaves, expressed plantings or natural growth, grass, shrubs, measured as a percentage of the total lot area including planted areas under roof eaves.

“Nonconforming development” means a lawful structure or site improvement, such as an off-street parking facility, landscaping, or accessway, that does not conform to the City’s current development ordinances either because it was established prior to the enactment of City ordinances governing the structure or improvement or because the structure or improvement conformed at the time it was established but applicable City ordinances have since changed.

“Nonconforming structure or use” means a lawful existing structure or use, at the time the ordinance codified in Chapter 19.100 or any amendment thereto becomes effective, which that does not conform to the requirements of the zone in which it is located, City’s current land use ordinances either because it was established prior to the enactment of City ordinances governing the use or because the use conformed at the time it was established but applicable City ordinances have since changed.

“Yard” means an open space on a lot which is unobstructed from the ground upward except as otherwise provided in this title.

“Front yard” means a yard between side lot lines, and measured horizontally and at right angles to the front lot line from the front lot line to the nearest point of the building.

“Rear yard” means a yard between side lot lines or between a street side yard and opposite side lot line, and measured horizontally and at right angles to the rear lot line from the rear lot line to the nearest point of the a main building.

“Side yard” means a yard between the front and rear yards, and measured horizontally and at right angles from the side lot line to the nearest point of the building.

“Street side yard” means a yard adjacent to a street between the front yard and the rear yards lot line, measured horizontally and at right angles from the side lot line to the nearest point of the building.

19.202 MEASUREMENTS

19.202.1 Horizontal Measurements

All horizontal distances for yard widths and lot and building dimensions shall be measured along a horizontal plane from the appropriate property line, edge of building, structure, storage area, parking area, or other object. These distances shall not be measured by following the topography of the land.

19.202.2 Vertical Measurements

A. Interior Height

Floor-to-ceiling height shall be measured from the top of the floor finish to the bottom of the ceiling joists, or, where there is no ceiling, to the bottom of the roof rafters.

B. Exterior Height

Except where otherwise specified in Title 19, building height shall be measured from the adjoining street centerline grade, as established by the City, or, where the building is set back from the street, building height may be measured from the average elevation of the finished grade at the front of the building to the highest point of the roof surface of a flat roof, to the deck line of a mansard roof, and to the mean height between the eaves and the ridge for a gable, hip, or gambrel roof.

CHAPTER 19.300 USE BASE ZONES

[Current Chapter 19.300 split into Chapters 19.300 Base Zones and 19.400 Overlay Zones, with both chapters restructured for more logical order. Only amended text is shown below. See Exhibit D for complete chapter.]

19.308 RESIDENTIAL-BUSINESS OFFICE-COMMERCIAL ZONE R-1-B

19.310 DOWNTOWN ZONES

NOTE: The C-L Zone in Riverfront Park just south of Johnson Creek (southerly portion of Tax Lot 1S1E35AA04600) was changed to Downtown Open Space by Ordinance 1981. **Figure 19.310-1 Downtown Zoning is amended to reflect the zone change adopted by that ordinance.**

19.310.3 Uses

F. Similar Uses

The Planning Director, through a Type I ~~Administrative~~ review, may determine that a use that is not listed is considered similar to a listed use in Table 19.310.3. The unlisted use shall be subject to the standards applicable to the similar listed use.

19.314.3 Application Review; Minimum Requirements

- E. Detailed traffic report, analyzing existing traffic, traffic generation, turning movements, and impact on adjacent streets. Report shall recommend roadway improvements needed to mitigate impacts as specified in Chapter 19.700. The application shall be reviewed under ~~Minor Quasi-Judicial Type III~~ review procedures as provided in Section 19.1006;

~~19.315.4 Authority and Appeal of Administrative Decisions~~

~~If the Planning Director has any questions regarding the applicant's ability to meet the criteria in Subsection 19.315.1, the request may be scheduled for review by the Planning Commission. In addition, a member of the public may appeal a use administratively approved or denied by the Planning Director to the Planning Commission. See Section 19.1001 for appeal procedures.~~

19.315.5 Site Development Requirements

F. Transition Area

~~When the industrial development is adjacent to and within 120 feet of areas zoned for residential uses is subject to Type I or II review per Section 19.906 Development Review.~~
~~† The following characteristics will be considered:~~

1. Noise;
2. Lighting;
3. Hours of operation;
4. Delivery and shipping;
5. Height of structure;
6. Distance to residential zone boundary.

~~The Commission review authority~~ may attach conditions to reduce any potentially adverse impacts to residential properties.

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19.317.10 Planning Commission Action on Final Development Plan and Program

- A. Upon receipt of the final development plan and program, zone change application, and preliminary subdivision plat, where applicable, notice shall be given and the Planning Commission shall hold a public hearing ~~per Subsection 19.1011.4 Major Quasi-judicial Review.~~ per Section 19.1007 Type IV Review. If the final development plan and program is found to be in compliance with previous approval and with the intent and requirements of this title, it shall recommend the same, together with appropriate documents and conditions, to the City Council for adoption.

19.317.11 Council Action on Final Development Plan and Program

- A. Upon receipt of Planning Commission recommendations as set forth above, the final development plan and program and zone change application shall be considered by the City Council per Section 19.1007 Type IV Review.

19.317.16 Expiration of Planned Development Zone

If, within 6 months of its effective date, substantial construction or development in the PD Zone has not occurred in compliance with the approved final development plan and program and schedule for stage completion, the Planning Commission may initiate a review of the PD Zone and hold a public hearing to determine whether its continuation in whole or in part is in the public interest. Notification and hearing shall be in accordance with ~~Subsection 19.1011.4 Major Quasi-judicial Review of the Zoning Ordinance~~ Section 19.1007 Type IV Review. If found not to be, the Planning Commission shall recommend to the City Council that the PD Zone be removed by appropriate amendment to the Zoning Ordinance and property changed back to original zoning.

CHAPTER 19.400 OVERLAY ZONES

[Current Chapter 19.300 split into Chapters 19.300 Base Zones and 19.400 Overlay Zones, with both chapters restructured for more logical order. Only amended text is shown below. See Exhibit D for complete chapter.]

19.401.5 Procedures

The following procedures shall govern the application of WG Zones:

- B. The Oregon Department of Transportation shall be notified ~~according to the provision of Subsection 19.1011.3.D of a hearing on a conditional use in the Willamette Greenway Zone.~~ The notice shall be sent via "certified mail, return receipt requested."

19.402.7 Activities Permitted Under ~~Minor Quasi-Judicial~~ Type III Review

19.402.9 Application Requirements

Applications for Type II and ~~III-Minor Quasi-judicial~~ review shall provide the following information in addition to the information required for the base zone:

19.402.12 Map Administration

- B. Map Corrections, Deletions
1. Improperly mapped water features shown on the Milwaukie Water Quality Resource Area Maps may be deleted by Type II ~~Administrative~~ review in accordance with Section 19.1005 subject to the following criteria:

19.403.4 Process for Designation or Deletion of a Landmark**A. Application Request**

The owner of record, contract purchaser, or an agent of any of the foregoing, of property within the City may make application for resource designation or deletion. The application shall be in such form and detail as the Planning Director prescribes and processed per Section 19.1007 Type IV Review ~~will be the same as the Major Quasi-Judicial review process of Subsection 19.1011.4 of this title.~~ The application shall be submitted to the Planning Director. The Planning Commission or the City Council may also initiate such proceedings on their own motion.

CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

[Current Chapter 19.400 renumbered as Chapter 19.500 (except Subsection 19.402.4 and Sections 19.404 and 19.405 moved to Section 19.910 Residential Dwellings—see below). Only amended text is shown below. See Exhibit D for complete chapter.]

19.501 GENERAL EXCEPTIONS

The exceptions listed in Subsections 19.501.1–4 below are by-right exceptions. By-right exceptions are either automatically required or outright allowed and require no special review or approval by the City to implement.

19.502.2 Single-Family Residential Provisions, Subsection B.1:**b. Commercial Zones**

Maximum height 6 feet. No electrified wire is permitted. Barbed or razor wire may be permitted for security purposes on top of a maximum height fence, following a Type II ~~Administrative~~ review as per Section 19.1005 in which a determination has been made that the proposed fencing will not adversely impact the health, safety, or welfare of adjacent property occupants. All outdoor storage shall require a 6-foot-high sight-obscuring fence.

c. Industrial Zones

Maximum height 8 feet. No electrified wire is permitted. Barbed or razor wire may be permitted for security purposes on top of a maximum height fence, except where such fencing is proposed adjacent to residential zones or residential uses, in which case such may be allowed following a Type II ~~Administrative~~ review as per Section 19.1005 in which a determination has been made that the proposed fencing will not adversely impact the health, safety, or welfare of adjacent property occupants. All outdoor storage shall require a sight-obscuring fence with a minimum height of 6 feet.

19.504 ~~SITE DESIGN PROVISIONS~~ STANDARDS**19.504.6 Transition Area Measures**

~~In zones where multifamily, commercial, or industrial projects are proposed that are within 100 feet of areas designated for lower density, transition measures shall be applied in order to minimize the impact on lower density uses. The downtown zones are exempt from this subsection. The transition measures shall be subject to Planning Commission review at a public~~

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~~hearing per Subsection 19.1011.3 Minor Quasi-Judicial Review, and shall include one or a combination of the following. The Planning Commission may apply conditions to such approval as will meet the objectives of this subsection.~~

~~A. Roadways separating projects.~~

~~B. Open areas (developed or undeveloped) separating new structures from adjacent parcels. A minimum distance equal to the required front yard of adjacent parcels will be established and maintained as open area. Natural vegetation, landscaping, or fencing will be provided to the 6-foot level to screen living rooms from direct view across open areas.~~

~~C. Gradual Density Changes~~

~~A new project may not have a density greater than 25% of the allowable density on lower-density residential parcels abutting the project. If abutting parcels have a variety of allowable residential densities, parcels with similar allowable densities abutting the highest percentage of the project perimeter will govern.~~

Where multifamily, commercial, or industrial development is proposed adjacent to properties zoned for lower density residential uses, the following transition measures shall be required. These additional requirements are intended to minimize impacts on lower residential density uses. The downtown zones are exempt from this subsection.

A. All yards that abut or are adjacent across a right-of-way from a lower density zone shall be at least as wide as the required front yard width of the adjacent lower density zone. This additional yard requirement shall supersede the base zone yard requirements for the development property where applicable.

B. All yards that abut or are adjacent across a right-of-way from a lower density zone shall be maintained as open space. Natural vegetation, landscaping, or fencing shall be provided to the 6-foot level to screen lower density residential uses from direct view across the open space.

19.505 BUILDING DESIGN PROVISIONS STANDARDS

19.506 MANUFACTURED DWELLING PLACEMENT SITING AND DESIGN STANDARDS

19.506.1 Purpose

This section is intended to meet State legislative requirements for the placement and design of manufactured homes on individual lots ~~and to provide standards for unit placement.~~

19.506.2 Applicability

Manufactured homes placed on individual lots are subject to the provisions of this section. Treatment of manufactured homes by zones is shown in Table 19.506:

Table 19.506 Manufactured Dwelling Placement by Zone				
Zone	Permitted Outright	Conditional Use	Temporary Permit	Manufactured Home Subdivision
R-10	X		X	X
R-7	X		X	X
R-5	X		X	X
R-3	X		X	X

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R-2.5	X		X	X
R-2	X		X	X
R-1-B	X		X	X
R-1	X		X	X
R-O-C	X		X	X

19.506.3 Definitions**19.506.4 Siting Standards**

Manufactured homes are outright allowed in any zone that outright allows single-family detached dwellings. Manufactured homes placed on individual lots shall meet the following standards:

19.506.6 Occupancy of Units

Manufactured homes placed on individual lots shall comply with all siting standards of Subsection 19.506.4 before being approved for occupancy. ~~All approval and siting standards of this section shall be complied with before a manufactured home placed on an individual lot may be approved for occupancy.~~

19.506.7 Review Process

- A. ~~Siting standards of this section shall be reviewed as part of the building review procedures of Subsection 19.1011.1.~~
- B. ~~Subdivision processes and procedures are contained in Title 17 Land Division.~~

19.507 HOME OCCUPATION ~~PROVISIONS~~ STANDARDS**CHAPTER 19.600 OFF-STREET PARKING AND LOADING**

[Current Chapter 19.500 renumbered as Chapter 19.600. No amendments. See Exhibit D for complete chapter.]

CHAPTER 19.700 PUBLIC FACILITY IMPROVEMENTS

[Current Chapter 19.1400 renumbered as Chapter 19.700. Only amended text is shown below. See Exhibit D for complete chapter.]

19.703.2 Application Submittal

For all proposed development that is subject to Chapter 19.700 per Section 19.702, one of the following types of applications is required.

A. Development Permit Application

If the proposed development does not require a land use application, compliance with Chapter 19.700 will be reviewed as part of the development permit application submittal.

B. Transportation Facilities Review (TFR) Land Use Application

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If the proposed development triggers a transportation impact study (TIS) per Section 19.704, a TFR land use application shall be required. Compliance with Chapter 19.700 will be reviewed as part of the TFR application submittal and will be subject to a Type II review process as set forth in Chapter 19.1000. The TFR application shall be consolidated with, and processed concurrently with, any other required land use applications.

If the proposed development does not trigger a TIS per Section 19.704 but does require the submittal of other land use applications, compliance with Chapter 19.700 will be reviewed during the review of the other land use applications.

~~C. Non-TFR Land Use Application~~

~~If the proposed development requires a land use application but does not trigger a TIS per Section 19.704, compliance with Chapter 19.700 will be reviewed as part of the land use application submittal, pursuant to the review procedures associated with that land use application as set forth in Chapter 19.1000.~~

CHAPTER 19.800 NONCONFORMING USES AND DEVELOPMENT

[Current Chapter 19.800 repealed and replaced. Complete chapter below—no underlining.]

19.801 PURPOSE

Nonconforming uses and development are uses and development that do not conform to the City's current land use and development regulations either because they were established prior to the enactment of such regulations or because they conformed at the time they were established but applicable City regulations have since changed.

Most nonconforming uses and development may be maintained but may not be altered without land use review. Nonconforming uses and development may be rebuilt if destroyed in some instances. In general, however, nonconforming uses and development shall be brought into conformance with applicable land use and development regulations when redevelopment occurs. In particular, the City does not support the continuation of high-impact nonconforming uses in perpetuity.

19.802 GENERAL PROVISIONS

19.802.1 Nonconforming Uses and Development

A specific site may be nonconforming because it contains a nonconforming use, nonconforming development, or both as defined in Section 19.201. Determination of the legal status of a nonconforming use or development may be requested by the property owner pursuant to Section 19.903.

19.802.2 Provisions

The following provisions apply to all nonconforming uses and development:

- A. Changes in ownership may occur and do not affect the status of a nonconforming use or development.
- B. A nonconforming use or development is allowed to change to a conforming use or development. Once a conforming use or development occupies the site, the nonconforming status is lost and the nonconforming use or development may not be reestablished.

- C. Routine maintenance and repair, as defined in Section 19.201, of a nonconforming use or development is allowed. Alteration, as defined in Section 19.201 and further described in Section 19.804, or destruction, as described in Section 19.805, may require land use review and/or may result in the loss of the nonconforming status of the use or development.
- D. Where other sections of the Milwaukie Municipal Code require nonconforming uses or development to come closer to conformance, those provisions apply instead of the provisions of this chapter.

19.803 CONTINUATION OF NONCONFORMING USES AND DEVELOPMENT

19.803.1 Provisions

A nonconforming use or development may continue indefinitely pursuant to the provisions in Subsection 19.802.2 unless it is discontinued as described in this section, altered as described in Section 19.804, destroyed as described in Section 19.805, or amortized as described in Section 19.806.

19.803.2 Loss of Nonconforming Use Status

If a nonconforming use is discontinued or abandoned as defined in Section 19.201 for more than 1 year, the site will lose its nonconforming status and any subsequent use on the site shall conform to all applicable land use and development regulations.

19.804 ALTERATION OF NONCONFORMING USES AND DEVELOPMENT

19.804.1 Nonconforming Uses

A. Provisions

The following provisions apply to the alteration of nonconforming uses:

1. A nonconforming use shall not be moved in whole or in part to any portion of the site other than that occupied by the nonconforming use, except as allowed per Subsection 19.804.1.B.1.
2. No additional development or physical alterations associated with the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1. Additional development or physical alterations not associated with the nonconforming use and that conform to Title 19 are allowed.
3. No intensification of the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1. Alterations that decrease the intensity of the nonconforming use are allowed.

B. Land Use Review Required

1. A nonconforming use shall not be moved, altered, or intensified unless such move, alteration, or intensification is approved by the Planning Commission through a Type III review process per Section 19.1006. The applicant shall demonstrate that the proposed move, alteration, or intensification would result in no more of a detriment to surrounding properties than the existing nonconforming use.
2. If a nonconforming use involving a structure is replaced by another use, the new use shall conform to Title 19 unless the Planning Commission determines that such structure is suitable only for another nonconforming use through a Type III review process per Section 19.1006. The applicant shall demonstrate that the new

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nonconforming use would be no more detrimental to surrounding properties than the one it is replacing.

19.804.2 Nonconforming Development

The following provisions apply to the alteration of nonconforming development:

- A. Alterations or expansions that increase or extend the nonconformity are not allowed unless a variance is approved pursuant to Section 19.911.
- B. Alterations or expansions that conform to Title 19 are allowed. For example, development that does not conform to height, yard requirements, or lot coverage may be altered provided that the alteration does not exceed the height, yard requirements, or lot coverage requirements of Title 19.

19.805 REBUILDING OF NONCONFORMING USES AND DEVELOPMENT

19.805.1 Provisions

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

- A. When a nonconforming use or development is intentionally destroyed to an extent less than or equal to 50% of its replacement value, restoration is allowed. The restoration shall not result in an increase in the nonconformance of the use or development.
- B. When a nonconforming use or development is intentionally destroyed to an extent exceeding 50% of its replacement value, restoration of the use or development shall conform to all applicable land use and development regulations.
- C. If a nonconforming use or development is partially or totally destroyed by fire or other causes or natural hazards beyond the control of the owner, the use or development may be restored or replaced. The restoration or replacement shall not be more out of conformance with the land use or development regulations than the original use or development.

19.805.2 Loss of Nonconforming Status

Restoration or replacement of nonconforming uses or development that have been partially or totally destroyed, whether intentional or by accident, must commence within 1 year from the date of destruction. If restoration or replacement does not commence within the 1-year period, the use or development will lose its nonconforming status and any subsequent use or development on the site shall conform to all applicable land use and development regulations.

19.806 AMORTIZATION OF NONCONFORMING USES

19.806.1 Purpose

The purpose of this section is to provide a process whereby the City could require the discontinuance of nonconforming uses through amortization in a manner that is fair, predictable, and transparent.

19.806.2 Applicability

- A. All legally established high-impact nonconforming uses as defined in Section 19.201 and as identified on the City's inventory pursuant to Subsection 19.806.3.B are subject to amortization and discontinuance. Illegally established uses are subject to enforcement proceedings by the City if not immediately discontinued or converted to a conforming use.
- B. The following nonconforming uses are not subject to amortization and discontinuance:

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1. Nonconforming uses that can be made conforming within 6 months, and the owner enters into an agreement with the City to bring the use into conformance within 6 months.
2. Nonconforming uses that are protected under the Religious Land Use and Institutionalized Persons Act.
3. Nonconforming uses that are identified as low-impact nonconforming uses as defined in Section 19.201.

19.806.3 Identification of Nonconforming Uses

- A. The City Council may direct the Planning Director to evaluate existing land uses within the City for the purpose of compiling an inventory of uses subject to amortization and discontinuance. Such direction shall be made by resolution at a public meeting.
- B. The Planning Director's evaluation shall be undertaken as follows:
 1. Create a list of all nonconforming uses pursuant to City Council direction as provided in Subsection 19.806.3.C below.
 2. Remove all properties that are exempt under Subsection 19.806.2.B from the list.
 3. Determine which nonconforming uses are high-impact nonconforming uses as defined by Section 19.201 that remain on the list.
 4. Compile an inventory of all properties containing a high-impact nonconforming use.
- C. At the time of a vote directing the Planning Director to perform an evaluation of nonconforming uses, the Council shall specify the following:
 1. The amount of time the Planning Director has to perform the evaluation, which shall be no less than 60 days.
 2. Whether the Planning Director shall evaluate all uses in the entire City or whether the evaluation should be limited to a specified geographic area, type of use, or zoning district.
- D. No less than 60 days after the Planning Director's completion of the inventory, City Council shall review and adopt the inventory by resolution. Upon review of the Planning Director's evaluation and inventory, Council may add or remove properties from the inventory prior to its adoption.
- E. No more than 30 days after the adoption of the inventory by City Council, the Planning Director shall provide notice to all property owners listed in the nonconforming use inventory. Such notice shall include the following:
 1. A statement that the City has determined that the subject property contains at least one nonconforming use that is subject to discontinuance through amortization.
 2. The findings from the Planning Director's evaluation.
 3. A copy of this ordinance.
 4. The date of the first evidentiary hearing before the Planning Commission to determine the schedule of amortization and discontinuance. Such a hearing shall be scheduled no less than 60 days after the mailing of the notice.

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19.806.4 Review Process

- A. For all properties with identified nonconforming uses that are included in the adopted nonconforming use inventory, the City shall require the discontinuance of such uses under a plan whereby the full value of any use-dependent structures and facilities are amortized within a definite and reasonable period of time. This action is a quasi-judicial action, not a legislative action, but shall utilize the Type IV review process pursuant to Section 19.1007. A separate hearing shall be conducted for each nonconforming use to determine the appropriate amortization schedule.
 - 1. The approved amortization schedule shall be adopted by ordinance and shall commence upon the effective date of the ordinance.
 - 2. The hearings conducted under this subsection per Section 19.1007 Type IV Review shall be limited to the determination of the following:
 - a. Whether the use is properly included on the inventory.
 - b. Whether the use is exempt from amortization and discontinuance under Subsection 19.806.2.B.
 - c. The duration of a reasonable amortization period and all terms associated therewith, based on the evaluation criteria in Subsection 19.806.5.
- B. The City Council may, by ordinance, execute a compliance agreement with the owner of any property found to contain a high-impact nonconforming use. Such an agreement shall include a schedule for the property owner to bring the property into conformance through discontinuance of all nonconforming uses in a certain amount of time or by other means acceptable to the City. Such an agreement shall alleviate the City's obligation to schedule a hearing to determine an amortization period pursuant to Subsection 19.806.4.A or, alternatively, shall supersede the established amortization period for the subject property.
- C. The City shall record in the Clackamas County real estate records all ordinances adopted pursuant to this subsection.

19.806.5 Evaluation Criteria

The City's review authorities shall consider the following criteria, at a minimum, in determining a reasonable length of time for the amortization period:

- A. Nature of the use, its operations, and structures.
- B. Character of the land and land uses in the surrounding area.
- C. Location of the use in relation to surrounding uses.
- D. Value of the land and its improvements.
- E. Length of time the use has been in existence and the length of time the use has been nonconforming.
- F. Amount of capital investment in the structures or improvements on the property at the time the use became nonconforming.
- G. Amount of investment realized to date and the amount remaining, if any, to be recovered during the amortization period.
- H. Existence or nonexistence of lease obligations.
- I. Removal costs that are directly attributable to the establishment of a discontinuance date.

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- J Other costs and expenses that are directly attributable to the establishment of a discontinuance date.
- K. Burden on the property owner resulting from discontinuance of the use.
- L. Benefit to the public resulting from discontinuance of the use.

CHAPTER 19.900 LAND USE APPLICATIONS

[All current land use applications are identified in Chapter 19.900. The new chapter includes some existing provisions, some new provisions, and references to all other application provisions that are located elsewhere. See Exhibit D for complete chapter.]

19.901 INTRODUCTION

[New text. Complete section below—no underlining.]

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

Table 19.901 Land Use Applications		
Application Type	Municipal Code Location	Review Types
Amendments to Maps and Ordinances:	Section 19.902	
Comprehensive Plan Amendment	Subsection 19.902.3	IV
Municipal Code Amendment	Subsection 19.902.4	IV
Zoning Map Amendment	Subsection 19.902.5	III, IV ¹
Annexations and Boundary Changes:	Chapter 19.1100	
Boundary Change	Section 19.1103	NA
Expedited Annexation	Section 19.1104	NA
Nonexpedited Annexation	Section 19.1102	IV
Appeal	Section 19.1009	Varies
Code Interpretation	Section 19.903	I
Community Service Use	Section 19.904	I, III
Compensation for Reduction in Property Value (Measure 37)	Chapter 1.20	NA
Conditional Use	Section 19.905	I, III
Development Review	Section 19.906	I, II

¹ Level of review determined by City Attorney per Section 19.902.5.A.1.

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Table 19.901 CONTINUED Land Use Applications		
Application Type	Municipal Code Location	Review Types
Director Determination	Section 19.903	I
Downtown Design Review	Section 19.907	I, II, III
Extension to Expiring Approval	Section 19.908	I, II
Historic Resource:	Section 19.403	
Alteration	Subsection 19.403.5	I, III
Demolition	Subsection 19.403.7	III
Status Designation	Subsection 19.403.4	IV
Status Deletion	Subsection 19.403.4	IV
Land Divisions:	Title 17	
Final Plat	Title 17	I
Lot Consolidation	Title 17	I
Partition	Title 17	II
Property Line Adjustment	Title 17	I, II
Replat	Title 17	I, II, III
Subdivision	Title 17	III
Miscellaneous:	Chapters 19.500 and 19.300	
Barbed Wire Fencing	Subsection 19.502.2.B.1.b-c	II
Bee Colony	Subsection 19.503.1.D	III
Multifamily Recycling Area	Subsection 19.504.8	I
Mixed Use Overlay Review	Section 19.404	III
Modification to Existing Approval	Section 19.909	I, II, III
Nonconforming Use Alteration	Chapter 19.804	III
Parking:	Chapter 19.600	
Quantity Determination	Subsection 19.605.2	II
Quantity Modification	Subsection 19.605.2	II
Shared Parking	Subsection 19.605.4	I
Structured Parking	Section 19.611	II, III
Planned Development	Section 19.317	IV
Residential Dwellings:	Section 19.910	
Accessory Dwelling Unit (Type 1)	Subsection 19.910.1	II
Accessory Dwelling Unit (Type 2)	Subsection 19.910.2	III
Manufactured Dwelling Park	Subsection 19.910.3	III
Temporary Dwelling Unit	Subsection 19.910.4	I, III
Sign Review	Title 14	Varies
Transportation Facilities Review	Chapter 19.700	II
Variances:	Section 19.911	
Use Exception	Subsection 19.911.5	III
Variance	Subsection 19.911.1-4	II, III
Water Quality Resource Review	Section 19.402	I, II, III, IV
Willamette Greenway Review	Section 19.401	III

19.902 ~~MAP AND TEXT~~ AMENDMENTS TO MAPS AND ORDINANCES

[Current Chapter 19.900 repealed and replaced as Section 19.902. Complete section below—no underlining.]

19.902.1 Purpose

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

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

19.902.2 Applicability

The requirements of Section 19.902 apply to the amendments described below.

- A. Amendments to add, modify, or delete the text of the Milwaukie Comprehensive Plan or its ancillary documents.
- B. Amendments to add, modify, or delete the text of Titles 14, 17, and 19 of the Milwaukie Municipal Code, or any other portion of the Milwaukie Municipal Code that constitutes a land use regulation per ORS 197.015.
- C. Amendments to change the maps of the Milwaukie Comprehensive Plan, including maps within ancillary documents. Changes to these maps resulting from actions taken by Section 19.1104 Expedited Process are exempt from the requirements of Section 19.902.
- D. Amendments to change the "Zoning Map of Milwaukie, Oregon," which is the map established by Subsection 19.107.2. Changes to this map resulting from actions taken by Section 19.402.12 Map Administration, and Section 19.1104 Expedited Process are exempt from the requirements of Section 19.902.

19.902.3 Comprehensive Plan Amendments

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

A. Review Process

Changes to the Milwaukie Comprehensive Plan described by Subsections 19.902.2.A or C shall be evaluated through a Type IV review per Section 19.1007.

B. Approval Criteria

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

- 1. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, as proposed to be amended.

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2. The proposed amendment is in the public interest with regard to neighborhood or community conditions, or corrects a mistake or inconsistency in the Comprehensive Plan or Land Use map.
3. The public need is best satisfied by this particular proposed amendment.
4. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
5. The proposed amendment is consistent with relevant State Statutes and Administrative Rules, including the Statewide Planning Goals and Transportation Planning Rule.

19.902.4 Municipal Code Amendments

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

A. Review Process

Changes to Titles 14, 17, or 19 of the Milwaukie Municipal Code, or any land use regulation as defined by ORS 197.015, that are described by Subsection 19.902.2.B shall be evaluated through a Type IV review per Section 19.1007.

B. Approval Criteria

Changes to the Milwaukie Municipal Code described by Subsection 19.902.2.B shall be approved if the following criteria are met:

1. The proposed amendment is consistent with other provisions of the Milwaukie Municipal Code.
2. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.
3. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
4. The proposed amendment is consistent with relevant State Statutes and Administrative Rules, including the Statewide Planning Goals and Transportation Planning Rule.
5. The proposed amendment is consistent with relevant federal regulations.

19.902.5 Zoning Map Amendments

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

A. Review Process

1. Changes to the Zoning Map described in Subsection 19.902.2.D shall be evaluated through either a Type III review, per Section 19.1006, or Type IV review, per Section 19.1007. The City Attorney shall have the authority to determine the appropriate review process for each Zoning Map Amendment. The City Attorney's review process determination is not a land use decision per ORS 197.015 and is not subject to appeal.

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

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2. Changes that affect both the Zoning Map and text of Titles 14, 17, or 19, or other land use regulation of the Milwaukie Municipal Code shall be evaluated through a Type IV review per Section 19.1007. These changes are subject to the approval criteria of Subsections 19.902.4.B and 19.902.5.B.

B. Approval Criteria

Changes to the Zoning Map of Milwaukie, Oregon, shall be evaluated against the following approval criteria. A quasi-judicial map amendment shall be approved if the following criteria are met. A legislative map amendment may be approved if the following criteria are met:

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

C. Conditions of Approval

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

D. Modification of Official Zoning Map

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

E. Revocation

If conditions of approval are not met within 2 years of ordinance adoption, the Planning Commission shall hold a public hearing to consider the revocation of the approved zoning

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through a Type III review per Section 19.1006. The Planning Commission may also, upon determination that the applicant is making satisfactory progress towards completing conditions of approval, grant a one-time extension not to exceed a maximum of 2 years.

19.903 CODE INTERPRETATIONS AND DIRECTOR DETERMINATIONS

[Current Subsection 19.1001.4 and Section 19.809 repealed and replaced as Section 19.903. Complete section below—no underlining.]

19.903.1 Purpose

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

Code interpretations are not intended to substitute for legislative amendments to land use regulations. Code interpretations may, however, be used as an interim measure to allow the City's land use regulations to be applied consistently with regional, State, or federal requirements until legislative amendments can be made.

19.903.2 Applicability

The provisions of Section 19.903 apply to the situations described below.

- A. A code interpretation may be made where the language of Titles 14, 17, or 19 is unclear in its terms, meaning, or intent. An interpretation is not necessary where the meaning of the code is unambiguous and no discretion is required in its interpretation. An interpretation is prohibited in either of the following situations:
 - 1. The code interpretation may affect the evaluation of approval standards or criteria for any quasi-judicial land use application that is currently under review by the City.
 - 2. The code interpretation is being sought as a remedy to a violation of the Milwaukie Municipal Code for which the City has issued a citation and the citation is pending judgment or sentencing.
- B. A Director determination may be requested for the following situations.
 - 1. Determination of whether a use is similar in nature to other outright allowed uses within a zone. A formal determination is not necessary where the comparison is obvious and the decision is nondiscretionary.
 - 2. Determination of the legal status of a nonconforming use or development.
 - 3. Determination of the legal status of a unit of land.
 - 4. Determination for any other situation where a discretionary decision is needed to review the facts of a situation and make determination as to the status, category, allowance, etc. per Titles 14, 17, or 19. This process is not available for provisions that specifically state that a decision under that provision cannot be appealed.

19.903.3 Review Process

- A. General Provisions

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1. Code interpretations are initiated by application to the City. The applicant may be any member of the public, the Planning Director, Planning Commission, or City Council. The Planning Director will decide within 14 days of receipt of an application whether to refuse or accept the request and issue an interpretation. Any application fees will be refunded if a request is refused.
2. Director determinations are initiated by application to the City.

B. Review Procedures

1. Code interpretations are evaluated through a Type I review per Section 19.1004. In addition to other notice provisions, a copy of the notice of decision shall be sent to the Planning Commission and City Council.
2. Director determinations are evaluated through a Type I review per Section 19.1004.

19.903.4 Approval Criteria**A. Code Interpretations**

Code interpretations are different from other land use applications in that they are an interpretation of language, policy, and legal matters, as opposed to an evaluation of a use or development. A code interpretation shall be as consistent as possible with the criteria listed below. Not all of the criteria need to be met for a code interpretation to be issued.

1. The proposed interpretation is consistent with the common meaning of the words or phrases at issue.
2. The proposed interpretation is consistent with relevant policy direction from official City documents such as the Comprehensive Plan and its ancillary documents.
3. The proposed interpretation is consistent with the legislative intent for the words or phrases at issue. The intent is based on the legislative record for the ordinance that adopted or amended the regulations at issue.
4. The proposed interpretation is consistent with the interpretation of other portions of the Milwaukie Municipal Code.
5. The proposed interpretation is consistent with regional, State, and federal laws and court rulings that affect the words or phrases at issue.

B. Director Determinations**1. Similar Use**

Director determinations of similar use shall be based on the following criteria:

- a. The proposed use and outright allowed uses are comparable with respect to the characteristics described below.
 - (1) Hours of operation.
 - (2) Generation of off-site impacts such as noise, lighting glare, dust, and odors.
 - (3) Employment and customer characteristics.
- b. The proposed use is consistent with the stated purpose, if available, of the zone under consideration.
- c. The base zone of the location where the use is proposed is reasonably similar to other zones where the proposed use is allowed outright.

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- d. The proposed use is consistent with goals and policies in the Comprehensive Plan regarding the proposed land use and the appropriate locations within the city for the use.

2. Legal Status of a Nonconforming Use or Development

Director determinations of legal status of a nonconforming use or development shall be based on the following criteria:

- a. The nonconforming use or development was permitted under applicable regulations at the time it was established. Evidence to address this criterion may include the following items:
 - (1) Copies of building and/or land use permits issued at the time the use, building, or other condition was established.
 - (2) Copies of zoning code provisions and/or maps.
 - (3) Demonstration that the situation was established before the applicable development code for the community was adopted.
- b. The nonconforming use has been legally maintained over time, and has not been discontinued or abandoned as described by Subsection 19.803.2. Evidence to address this criterion may include the following items:
 - (1) Utility bills.
 - (2) Income tax records.
 - (3) Business licenses.
 - (4) Listings in telephone, business, and Polk directories.
 - (5) Advertisements in dated publications; e.g., trade magazines.
 - (6) Building, land use or development permits.

3. Legal Status of a Unit of Land

Director determinations of the legal status of a unit of land shall evaluate the date of creation or boundary change for the units of land in question and determine whether the required City, County, and State approvals were granted at that time to approve the land division or boundary change.

Evidence that required approvals were granted may include the following items:

- a. Title report, including related instruments of conveyance.
- b. Plats on file with the Clackamas County Surveyor's office.
- c. Deeds recorded with the Clackamas County Recorder's office.
- d. Land use applications and decisions from the City of Milwaukie or Clackamas County.

4. Other

The Planning Director may make other determinations, aside from similar use, legal status of a nonconforming use or development, or legal status of a unit of land. Such a determination shall evaluate the specific facts concerning the determination request and make a ruling of how to apply the provisions of Title 14, 17 or 19, or other land use

regulations within the Milwaukie Municipal Code. The approval criteria for this determination are as follows:

- a. The determination is consistent with relevant policy direction from official City documents such as the Comprehensive Plan and its ancillary documents.
- b. The determination is consistent with the purpose or intent statements, if available, in the applicable sections of code.
- c. The determination is consistent with the legislative intent for the words or phrases at issue. The intent is based on the legislative record for the ordinance that adopted or amended the regulations at issue.
- d. The determination is consistent with any legal opinions from the City Attorney.

19.903.5 Other Provisions for Code Interpretations and Director Determinations

A. Code Interpretations

1. Code interpretations shall control the future application of the sections of the Milwaukie Municipal Code to which they pertain unless superseded by a subsequent code interpretation or legislative change to the Milwaukie Municipal Code.
2. The Planning Director shall maintain current code interpretations on file at the Planning Department's offices for public review.

B. Director Determinations: Similar Use and Other

1. Director determinations issued under Subsections 19.903.4.B.1 and 4 are based on the specific facts presented for each determination. Director determinations issued by the City may be relied upon for future determinations where circumstances are similar, but do not necessarily set precedent for subsequent code determinations.
2. Issuance of a Director determination does not obligate the City to issue any permit or preclude code enforcement action if the situation evaluated by the City differs from what was presented in the determination request.
3. A Director determination issued under Subsections 19.903.4.B.1 or 4 does not expire unless the code used for the determination is amended.

C. Director Determinations: Legal Status of a Nonconforming Use or Development or Unit of Land

1. An applicant for a Director determination issued under Subsections 19.903.4.B.2 or 3 may request a subsequent determination if new evidence or materials become available.
2. The City may pursue code enforcement to correct a violation of the Milwaukie Municipal Code following a Director determination where evidence is clear that a use, land division, or boundary change was illegally established.

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19.904 COMMUNITY SERVICE USES ~~CSU~~

[Current Section 19.321 renumbered as Section 19.904. Only amended text is shown below. See Exhibit D for complete chapter.]

19.904.3 Review Process ~~Notice Requirements~~

Except as provided in Subsections 19.904.5.C for minor modifications and 19.904.11 for Wireless Communication Facilities, community service uses shall be evaluated through a Type III review ~~per the Planning Commission shall hold a public hearing for a community service use request per the procedures outlined in Section 19.1006.~~

19.904.4 Approval Criteria ~~Standards for Community Service Uses~~

19.904.5 Procedures for Reviewing a Community Service Use

- A. The Planning Commission will hold a public hearing on the establishment of, or major modification of, the proposed community service use. If the Commission finds that the approval criteria ~~standards~~ in Subsection 19.904.4 are met, the Commission shall approve the designation of the site for community service use. If the Commission finds otherwise, the application shall be denied. An approval allows the use on the specific property for which the application was submitted, subject to any conditions the Planning Commission may attach.
- C. The Planning Director may approve minor modifications to an approved community service per Section 19.1004 Type I Review ~~use pursuant to a Type I procedure~~, provided that such modification:

19.904.11 Standards for Wireless Communication Facilities

C. Application Process:

- 1. Placement, construction, or modification of WCFs not involving the construction of a new monopole ~~shall be~~ are subject to the provisions of Section 19.1005 Type II Review, provided that the antennas and base equipment comply with the standards contained in this subsection. Also see Table 19.904.11.C.
- 2. All proposed new monopole towers are subject to Section 19.1006 Type III Minor Quasi-judicial Review ~~Type III Minor Quasi-judicial Review~~. Also see Table 19.904.11.C

Table 19.904.11.C (footnotes):

1 = Type III Minor Quasi-judicial review—requires a public hearing in front of the Planning Commission

2 = Type II Administrative review—provides for an administrative decision ~~with the option of a public hearing~~

Subsection G.6:

- d. In some cases equipment cabinets may be placed in areas where landscaping may not be practical. For ~~these circumstances~~ for Type II land use reviews applications, the applicant may request that the Planning Director waive landscaping requirements. For Type III Minor Quasi-judicial ~~Type III Minor Quasi-judicial~~ land use applications, the applicant may request that the Planning Commission waive landscaping requirements.

19.905 CONDITIONAL USES

[Current Chapter 19.600 repealed and replaced as Section 19.905 (except Subsection 19.602.10 moved to Subsection 19.910.2—see below). Complete section below—no underlining.]

19.905.1 Purpose

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

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

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

19.905.2 Applicability

- A. This section applies to the establishment of a use identified as a conditional use in the base zones in Chapter 19.300 or overlay zones in Chapter 19.400 that are applicable to the property on which the use is proposed.
- B. This section applies to the major or minor modification of existing conditional uses.
- C. This section does not apply to modification of uses that received conditional use approval at one time but are currently allowed outright by the property's base zones and overlay zones.

19.905.3 Review Process

- A. Establishment of a new conditional use or major modification of an existing conditional use shall be evaluated through a Type III review per Section 19.1006.
- B. Minor modification of an existing conditional use shall be evaluated through a Type I review per Section 19.1004.

19.905.4 Approval Criteria

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

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5. The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones, and the standards in Section 19.905.
 6. The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.
 7. Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.
- B. Minor modification of an existing conditional use shall be approved if the following criteria are met:
1. The proposed modification will not significantly increase the intensity of the use at this location.
 2. The proposed modification will comply with all applicable development standards and requirements of the base zone, any overlay zones, and the standards in Section 19.905.
 3. The proposed modification will not negatively impact nearby uses, protected natural features, or public facilities more than the original conditional use.
 4. The proposed modification will comply with any conditions of approval from the original conditional use approval.

19.905.5 Conditions of Approval

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

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

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

19.905.6 Conditional Use Permit

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

19.905.7 Review of Existing Conditional Use Permits

- A. The Planning Director may evaluate the operation of a conditional use for compliance with the conditional use permit if it appears the terms and conditions of the permit are being violated or complaints are received regarding the use. An observation or complaint must be based on one of the following occurrences:
 - 1. Violation of any applicable development standard or requirement that pertains to the conditional use.
 - 2. Failure to operate as approved or failure to satisfy a condition of approval from the original conditional use approval.
 - 3. Incidents that are perceived to be a direct result of the conditional use and that may be detrimental to the health, safety, property, or general welfare of the public.
- B. If the Planning Director finds that the conditional use is noncompliant or is having unanticipated impacts that are detrimental to the health, safety, property, or general welfare of the public, the Planning Director shall require the owner and/or operator to resolve the issue within a specified period of time.

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- C. If the owner and/or operator of the conditional use cannot or does not resolve the issue in Subsection 19.905.7.B, the matter shall be heard by the Planning Commission to review the conditional use permit and to consider modification, suspension, or revocation of the conditional use permit. The review shall follow the procedures of Section 19.1006 Type III Review. The owner and/or operator shall not be charged a fee for this review.

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

1. Allow the continued operation of the conditional use without modifications to the conditional use permit. This option should be utilized when the Planning Commission finds that the use is not out of conformance with the conditional use permit or that complaints raised under Subsection 19.905.7.A.3 are not detrimental to the health, safety, property, or general welfare of the public.
2. Suspend the permit and require the cessation of the conditional use until the issue is resolved. Upon suspension of the conditional use permit, the Planning Commission shall set a future meeting date to consider reinstating the permit. A suspended permit may be reinstated when, in the judgment of the Planning Commission, the issue has been resolved.
3. Modify the conditional use permit to address the circumstance(s) that gave rise to the issue. Modifications to the condition use permit shall be based on factors relevant to the approval criteria for conditional uses in Subsection 19.905.4. The Planning Commission may opt to suspend the permit per Subsection 19.905.7.C.1 until compliance with the modified conditional use permit is achieved.
4. Revoke the conditional use permit. Revocation of a conditional use permit shall only occur in either of the following circumstances:
 - a. The nature of the conditional use is such that its impacts cannot be minimized or mitigated to be consistent with the conditional use approval criteria.
 - b. The property owner and/or operator of the conditional use failed to comply with the terms and/or conditions of the original or modified conditional use permit.

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

- A. A legally established use currently identified in the code as a conditional use is a de facto conditional use, rather than a nonconforming use, even if:

1. It had previously been identified as an outright allowed use or nonconforming use.
2. It had not previously undergone conditional use review.

A de facto conditional use does not require a conditional use permit. Modifications to a de facto conditional use shall be evaluated per Subsections 19.905.3 and 4.

- B. A conditional use or de facto conditional use shall automatically lose its conditional use status if either of the following occurs. A dispute about whether these either of these situations has occurred shall be resolved by the Planning Director through the Director determination process pursuant to Section 19.903.

1. The conditional use or de facto conditional use undergoes a change in use. Changes in use to an outright allowed use or a use approved through another discretionary review process results in the loss of any conditional use status. Changes in use to another approved conditional use results in the loss of the conditional use status only for the prior use.

2. The conditional use or de facto conditional use has been discontinued or abandoned as defined in Section 19.201 for more than 2 years. This discontinuation applies only to properties that both:
 - a. Received conditional use approval or became de facto conditional uses following the effective date of Ordinance #_____.
 - b. Are not residential conditional uses or residential de facto conditional uses.

19.905.9 Standards Governing Conditional Uses

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

A. Yards

Additional yard width requirements may be imposed as a condition of approval to address impacts related to building height, mass, and proximity to residential land uses.

B. Access to Property and Building Openings

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

C. Surface Mining

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

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

D. Junk or Wrecking Yard

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

E. High-Impact Commercial Use

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

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

F. Single-Family Attached Dwellings

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

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

G. Multifamily Condominium and Apartment Dwellings

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

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

H. Senior and Retirement Housing

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

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

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

An applicant is required to submit materials and the Planning Commission shall attach conditions which will ensure that the special nature of the housing, and groups to be

served, are clearly defined and maintained in perpetuity. Also a project is required to meet the definition for this type of housing defined in Section 19.201.

19.906 DEVELOPMENT REVIEW

[New text. Complete section below—no underlining.]

19.906.1 Purpose

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

19.906.2 Applicability

A. Type I Review

The following development proposals must submit a Development Review application and are subject to the requirements of this section, unless explicitly stated otherwise in an applicable land use approval, waived by the Planning Director at the time of development permit submittal, or exempted per Subsection 19.906.2.C.

1. New development and expansions or modifications of existing development that require review against standards and criteria that are either clear and objective, or that require the application of limited professional judgment.
2. A change in primary use.
3. Parking lot expansions or modifications that change the number of parking spaces by five spaces or more.

B. Type II Review

The following development proposals must submit a Development Review application and are subject to the requirements of this section. Type II Development Review does not apply to development proposals in the downtown zones as these zones have a separate design review process.

1. New development, or expansions or modifications to existing development, for which the applicant elects, where a choice is available, to have the proposal reviewed against discretionary criteria or standards.
2. New construction of over 1,000 square feet in the Manufacturing (M) zone within 120 feet of areas zoned for residential uses or within any part Business Industrial (BI) zone.
3. New development or expansions, or modifications to existing development, where the scale of development and/or the level of discretion required to evaluate applicable standards and criteria is not appropriate for a Type I development review.

C. Exemptions

The following development proposals are not required to submit a Development Review application and are exempt from the requirements of this section. Proposals that are exempt from this section must still comply with all applicable development and design standards. For proposals that require a development permit, compliance with standards will be reviewed during the permit review process.

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1. New or expanded single-family detached or attached residential dwellings.
2. Single-family residential accessory uses and structures.
3. Interior modifications to existing buildings that do not involve a change of use.
4. Construction of public facilities in the public right-of-way.
5. Temporary events as allowed in Chapter 11.04.

19.906.3 Review Process

A. General Provisions

1. Development review generally includes review of the proposed use(s), structure(s), and site improvements for compliance with applicable standards. For expansions or modifications of existing development, the review is limited to the modified portions of the site or structure and any other site improvements that may be affected by the proposed modifications.
2. Development proposals that are subject to Type II development review and require other land use approvals may submit a Type II development review application with the other required land use application(s) for concurrent review per Subsection 19.1001.6.B.
3. Development proposals that are subject to Type II development review and require development permits may submit a development permit application at any time; however, the City will not issue development permits until the Type II development review application has been approved.
4. Development proposals that are subject to Type I development review and require development permits may submit a Type I development review application with the required development permits for concurrent review. The City will not issue development permits until the Type I development review application has been approved.
5. Submittal of a Type II development review application may not preclude the need for submittal of a Type I development review application. Depending on the nature of the development proposal, Type II development review may be required during the land use review phase of the proposal, and Type I development review may be required during the development permit review phase of the proposal.

B. Review Types

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

19.906.4 Approval Criteria

The criteria in this subsection are the approval criteria for Type I and Type II development review applications. The criteria are based on a review of development standards throughout

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Title 19 Zoning. Not all of the standards within the chapters listed below are applicable to a proposal, and the City will identify the applicable standards through the development review process. Though the criteria are the same for Type I and Type II development review, the standards evaluated in a Type I review will be clear and objective or require limited professional judgment, while the Type II review will involve discretionary standards and/or criteria.

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

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

19.907 DOWNTOWN DESIGN REVIEW

[Current Subsection 19.312.7 renumbered as Section 19.907. Only amended text is shown below.]

19.907.3 Design Guidelines

Design guidelines shall be established for the downtown zones and shall be considered as part of design review applications in accordance with the provisions of Section 19.310. ~~The design guidelines shall be adopted by resolution of the City Council, in accordance with the procedures of Subsection 19.1011.5.~~

19.907.5 Application Procedure

- C. Major exterior alterations, as defined in Subsection 19.310.6.B.3 shall be processed as a Type III Minor Quasi-judicial review in accordance with the procedures in Section 19.1006. Applications for major exterior alterations shall be heard in a public hearing by and decided by the Planning Commission, except as follows:

19.907.8 Report and Recommendation by Design and Landmarks Committee

~~When an application also requires Planning Commission approval, the Planning Director for Type II reviews, or Design and Landmarks Committee for Minor Quasi-Judicial Reviews, shall make a written report of its recommendation concerning the design to the Planning Commission. After receiving the Planning Director's or Design and Landmarks Committee's recommendation, the Planning Commission shall consider the design review recommendation and integrate it with the land use application process applicable to the project.~~

The Design and Landmarks Committee shall hold a public meeting and prepare a design review report for design review applications that require Type III review pursuant to Section 19.1010. The Planning Commission shall consider the findings and recommendations contained in the design review report during the public hearing on the proposal.

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19.908 EXTENSIONS TO EXPIRING APPROVALS

[New text. Complete section below—no underlining.]

19.908.1 Purpose

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

19.908.2 Applicability

A. Approvals Eligible for Extensions

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

B. Approvals Not Eligible for Extensions

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

19.908.3 Review Process

A. General Provisions

1. An extension application must be submitted and approved prior to the expiration date of the approval. An extension application may not be submitted more than 6 months in advance of an expiration date.
2. An extension may be approved up to a maximum of two years from the effective date of the extension approval. Additional extensions may be requested. There is no limit to the number of extensions that may be requested or approved.
3. If the original application was approved through a Type III review process, the Planning Director shall notify the Planning Commission of receipt of an extension application at the same time that public notice is mailed for the application.
4. If an extension application is denied, the applicant may seek approval for the proposed development by resubmitting all applicable land use applications. Such applications are subject to all procedures, approval criteria, and development standards in effect at the time of submission.

B. Review Types

1. If the original application was approved through a Type I review process, the extension application shall be evaluated through a Type I review per Section 19.1004.
2. If the original application was approved through a Type II or Type III review, the extension application shall be evaluated through a Type II review per Section 19.1005 in order to provide public notice and opportunity for public comment.

19.908.4 Approval Criteria

An extension shall be approved when all of the following criteria have been met:

- A. There have been no significant changes on the subject property, in the vicinity of the subject property, or to any relevant regulations since the original application was approved.
- B. No modifications to the approved application or to the conditions of approval are proposed.

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

19.909 MODIFICATIONS TO EXISTING APPROVALS

[New text. Complete section below—no underlining.]

19.909.1 Purpose Statement

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

19.909.2 Applicability

A. Modifications Requiring Submittal of New Application

A modification application is required for any land use application that was approved pursuant to Titles 14, 17, or 19 of the Milwaukie Municipal Code through a Type I, II, or III review and that has been subsequently modified such that the proposal no longer substantially conforms to the plans and/or other development documents upon which the original proposal was evaluated and approved.

B. Exceptions

A modification application is not required when modifications are required by City staff during development review for compliance with conditions of approval, development standards, public works standards, or any other applicable standards that the City has the authority to implement at the time of development.

19.909.3 Review Process

A. General Provisions

1. The Planning Director shall determine whether the modified proposal substantially conforms to the plans and/or other development documents upon which the original proposal was evaluated and approved. This determination is not a land use decision and is not subject to appeal.
2. If the Planning Director determines that a modified proposal no longer substantially conforms to the original approval, the Planning Director shall require one of the following before approving any development permits:
 - a. Submittal and approval of a modification application to modify the original approval per this section.
 - b. Withdraw of the original land use application and resubmittal of the application with the proposed modifications.
3. For a modification requiring review under this section, the Planning Director shall determine whether the modification is major or minor in nature. This determination is not a land use decision and is not subject to appeal.

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- a. Major modifications are modifications that alter a condition of approval imposed by the Planning Commission, have different or more impacts than the original proposal, and/or require substantial changes to the findings from the original approval.
 - b. Minor modifications are all modifications not otherwise identified as major modifications.
- 4. The scope of review for a modification application reviewed under this section is limited to the modified portions of the development proposal and any other portions of the development proposal that are affected by the modification.
- 5. Denial of a modification application does not invalidate the original approval.
- B. Review Types
 - 1. Major or minor modification of original Type I approval
Major and minor modifications shall be evaluated through a Type I review per Section 19.1004.
 - 2. Major or minor modification of original Type II approval
Minor modifications shall be evaluated through a Type I review per Section 19.1004. Major modifications shall be evaluated through a Type II review per Section 19.1005.
 - 3. Major or minor modification of original Type III approval
Minor modifications shall be evaluated through either a Type I or Type II review per Section 19.1004 or 19.1005. The Planning Director shall determine the review type after considering the nature and scope of the modification. The Planning Director's determination shall favor the review type that provides the most appropriate public notice and opportunity for public comment. This determination is not a land use decision and is not subject to appeal. Major modifications shall be evaluated through a Type III review per Section 19.1006.

19.909.4 Approval Criteria

- A. Approval Criteria for Minor Modifications
 - 1. The proposed modification complies with all applicable development standards and requirements, except as modified by the original approval.
 - 2. The proposed modification will continue to meet all applicable approval criteria upon which the original approval was based.
 - 3. The proposed modification, as either proposed or conditioned, will not negatively impact nearby uses, protected natural features, or public facilities any more than what was identified in the original approval.
 - 4. The proposed modification does not alter or contravene any conditions of approval from the original approval.
- B. Approval Criteria for Major Modifications
 - 1. The proposed modification complies with all applicable development standards and requirements, except as modified by the original approval.
 - 2. The proposed modification will continue to meet all applicable approval criteria upon which the original approval was based.

19.909.5 Conditions of Approval

The review authority may impose conditions of approval that are suitable and necessary to ensure that the proposed modification will not cause the approved development proposal to fail to meet any approval criteria upon which the original approval was based or negatively impact nearby uses, protected natural features, or public facilities.

19.910 RESIDENTIAL DWELLINGS

[Four current residential dwelling types combined into one section, with new introductory text. Sources for the four individual subsections are described below.]

This section contains applications for types of residential dwellings that require land use approval.

19.910.1 Accessory Dwelling Units (Type 1)

[Current Subsection 19.402.4 renumbered as Subsection 19.910.1. Only amended text is shown below. See Exhibit D for complete section.]

- D. Notwithstanding the maximum allowable ~~gross~~ net floor area of 600 square feet, the accessory dwelling unit shall not exceed 40% of the gross floor area of the primary structure.

19.910.2 ~~Type 2~~ Accessory Dwelling Units (Type 2)

[Current Subsection 19.602.10 renumbered as Subsection 19.910.2. Only amended text is shown below. See Exhibit D for complete section]

Type 2 accessory dwelling units are only allowed in the base zones where they are listed as conditional uses. Where allowed, they are subject to conditional use review and approval per Section 19.905. A Type 2 accessory dwelling unit may be allowed in conjunction with a detached single-family dwelling by conversion of existing space, or by means of an addition.

19.910.3 Manufactured Dwelling Parks

[Current Section 19.405 renumbered as Subsection 19.910.3. No amendments. See Exhibit D for complete section.]

19.910.4 Temporary Dwelling Units Provisions

[Current Section 19.404 renumbered as Subsection 19.910.4. Only amended text is shown below. See Exhibit D for complete section.]

C. Review Process

Applications for temporary structures shall be evaluated through a Type I review per ~~processed according to~~ Section 19.1004. Temporary permits that exceed the 6-month time period allowed under Subsection 19.910.4.A shall be evaluated through a Type III review ~~per must be reviewed by the Planning Commission under~~ Section 19.1006.

Proposed Code Amendment

19.911 VARIANCES, EXCEPTIONS, AND HOME IMPROVEMENT EXCEPTIONS

[Current Chapter 19.700 repealed and replaced as Section 19.911. Complete section below—no underlining.]

19.911.1 Purpose

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

19.911.2 Applicability

A. Eligible Variances

Except for situations described in Subsection 19.911.2.B, a variance may be requested to any standard or regulation in Titles 17 or 19 of the Milwaukie Municipal Code, or any other portion of the Milwaukie Municipal Code that constitutes a land use regulation per ORS 197.015.

B. Ineligible Variances

A variance may not be requested to address the following situations:

1. To eliminate restrictions on uses or development that contain the word "prohibited."
2. To change a required review type.
3. To change or omit the steps of a procedure.
4. To change a definition.
5. To increase, or have the same effect as increasing, the maximum permitted density for a residential zone.
6. To justify or allow a Building Code violation.
7. To allow a use not outright allowed by the base zone. Requests of this nature may be allowed through the use exception provisions in Subsection 19.911.5; nonconforming use replacement provisions in Subsection 19.804.1.B.2; conditional use provisions in Section 19.905, or; community service use provisions in Section 19.904.

C. Exceptions

A variance application is not required where other sections of this code specifically provide for exceptions, adjustments, or modifications to standards either by-right or as part of a specific land use application review process.

19.911.3 Review Process

A. General Provisions

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

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3. One variance application may include up to three variance requests. Each variance request must be addressed separately in the application. If all of the variance requests are Type II, the application will be processed through the Type II review process. If one or more of the variance requests is a Type III, the application will be processed through the Type III review process. Additional variance requests must be made on a separate variance application.

B. Type II Variances

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

1. A variance of up to 40 percent to a side yard width standard.
2. A variance of up to 25 percent to a front, rear, or street side yard width standard. A front yard width may not be reduced to less than 15 feet through the Type II review process.
3. A variance of up to 10 percent to lot coverage or minimum vegetation standards.
4. A variance of up to 10 percent to lot width or depth standards.
5. A variance of up to 10 percent to a lot frontage standard.

C. Type III Variances

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

19.911.4 Approval Criteria

A. Type II Variances

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

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

B. Type III Variances

An application for a Type III variance shall be approved when all of the criteria in either Subsection 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

1. Discretionary Relief Criteria

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- a. The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.
 - b. The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:
 - (1) The proposed variance avoids or minimizes impacts to surrounding properties.
 - (2) The proposed variance has desirable public benefits.
 - (3) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.
 - c. Impacts from the proposed variance will be mitigated to the extent practicable.
2. Economic Hardship Criteria
- a. Due to unusual site characteristics and/or other physical conditions on or near the site, the variance is necessary to allow reasonable economic use of the property comparable with other properties in the same area and zoning district.
 - b. The proposed variance is the minimum variance necessary to allow for reasonable economic use of the property.
 - c. Impacts from the proposed variance will be mitigated to the extent practicable.

19.911.5 Use Exceptions

A. Applicability

Use exceptions are a type of variance intended to allow uses that are not outright or conditionally allowed by a property's base or overlay zones. Use exceptions shall not be granted to allow uses that are specifically prohibited by a property's base or overlay zones.

B. Review Process

Use exceptions shall be evaluated through a Type III review per Section 19.1006.

C. Approval Criteria

Economic hardship shall not be a primary basis for allowance of a use exception nor shall circumstances of which the applicant had prior knowledge be considered upon application. The Planning Commission may authorize exceptions to uses established by Title 19 upon a determination that all of the following criteria have been met:

- 1. Exceptional circumstances exist on or near the property over which the property owner has no control.
- 2. None of the allowed or conditionally allowed uses for which the property is zoned are practical.
- 3. The proposed use will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.
- 4. Impacts from the proposed use will be mitigated to the extent practicable.

CHAPTER 19.1000 ~~ADMINISTRATIVE PROVISIONS~~ REVIEW PROCEDURES

[Current Chapter 19.1000 repealed and replaced. Complete chapter below—no underlining.]

19.1001 GENERAL PROVISIONS

19.1001.1 Purpose

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

19.1001.2 Applicability

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

19.1001.3 Consistency with Statute

The processing of applications and permits authorized under Titles 14, 17 and 19 shall be consistent with the Oregon Revised Statutes (ORS). The City shall follow the provisions of the ORS in instances where following the provisions of this chapter alone would fail to meet State requirements for the processing or review of land use applications or permits.

19.1001.4 Review Types

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

A. Review Types

There are four types of reviews: Type I, II, III, and IV. Table 19.901 lists the City's land use applications and their associated review type.

B. Determination

When a review type for a land use application is not specified in Table 19.901, or otherwise required by law, the Planning Director shall determine the review type. The Planning Director's determination shall favor the review type that provides the most appropriate public notice and opportunity for public comment. The Director's review type determination is not a land use decision per ORS 197.015 and is not subject to appeal.

C. Notice

The notice requirements in this chapter shall be the minimum amount of notice required for the specific type of application review. The City may provide notice in excess of the minimum requirements as long as the remaining procedures for the specified type of review are followed.

19.1001.5 Review and Appeal Authorities

- A. The review authority for each review type shall be as listed in Table 19.1001.5. The review authority is also the decision authority, except for Type IV reviews as described below.
- B. The appeal authorities listed in Table 19.1001.5 are appeal authorities within the City of Milwaukie's land use review process. The decision of the appeal authority is the City of

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Milwaukie's final decision for a permit, land use action, or zone change. Parties with standing may appeal the City's final decision to the Oregon Land Use Board of Appeals or other court.

Table 19.1001.5 Land Use Application Review and City Appeal Authorities		
Review Type	Review Authority	Appeal Authority
Type I	Planning Director	Planning Commission
Type II	Planning Director	Planning Commission
Type III	Planning Commission	City Council
Type IV	City Council, with initial hearing and recommendation by Planning Commission	None

19.1001.6 Applications

A. Initiation

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

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

B. Review of Multiple Applications

When multiple land use applications are required for a single proposal, the applicant may opt, or the City may require, that the applications be processed concurrently or individually.

The City shall generally allow applicants the discretion to have multiple applications for a proposal processed concurrently or individually. The City may require that applications be reviewed concurrently for proposals where a review of an application(s) would be difficult without the context of the other applications related to the proposal. Alternatively, the City may require parts of an application to be processed separately in order to comply with the 120-day decision requirement or to allow decisions on parts of a proposal to be made with a lower level of review.

1. Applications Processed Concurrently

A concurrent application review consolidates the review of multiple applications into a single review process. The applications shall be processed according to the highest numbered review type required for any part of the application. For example, a concurrent review of a Type II review and a Type III review would be processed through a Type III review. A single decision shall be issued that includes findings for all of the applications that are part of the concurrent review.

The applicant shall submit an application form and application fee for each application type being reviewed. The application shall contain the information and documentation required for each individual application type.

2. Applications Processed Individually

Multiple applications related to a single proposal may be submitted individually at the same time or at different points in time. Each individual application or group of

concurrent applications shall be processed according to their specified review type. Any concurrent applications shall be processed as specified in Subsection 19.1001.6.B.1. For each application or group of concurrent applications, the review authority will issue a separate decision.

The applicant shall submit an application form and application fee for each application type being reviewed. The application shall contain the information and documentation required for each individual application type.

19.1001.7 Decisions

A. Conditions of Approval

The review authority shall impose conditions of approval on an application as necessary to ensure conformance with relevant approval criteria and development standards.

B. Applicable Standards and Criteria

Approval or denial of all ministerial or quasi-judicial applications, as defined by the ORS, shall be based upon the development standards and approval criteria that were in effect at the time the application was first submitted. In cases where implementation of an initial application approval will require approval of subsequent applications, the review authority for the initial application may make an exception to this requirement. This exception shall be valid for as long as the initial land use application is valid.

C. 120-Day Decision Requirement

The City shall take final action on land use actions subject to ORS 227.178, including resolution of all local appeals, within 120 days after the application has been deemed complete, unless the applicant provides a written statement consenting to an extension of the 120-day decision requirement. The total of all extensions, except as provided for mediation per ORS 227.178(11), shall not exceed 245 days.

D. Effective Date of Decisions

Decisions on land use applications become effective as described below.

1. The day after the appeal period expires, if no appeal is filed.
2. The day the decision is issued by the City's final appeal authority, if an appeal is filed.

E. Expiration of Approved Decisions

1. Type I, II and III land use approvals granted pursuant to this chapter for land use applications submitted after the effective date of Ordinance #_____ shall expire and become void unless the following criteria are satisfied:
 - a. For proposals requiring any kind of development permit, the development must complete both of the following:
 - (1) Obtain and pay for all necessary development permits and start construction within two years of land use approval.
 - (2) Pass final inspection and/or obtain a certificate of occupancy within four years of land use approval.
 - b. For proposals not requiring development permits, the development must utilize its approvals within four years of land use approval.
2. Land use approvals shall expire as outlined above unless one of the following occurs:

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- a. An extension is granted pursuant to Section 19.908.
 - b. The review authority specifies a different expiration date in the land use decision to accommodate large, complex, or phased development projects.
 - c. The expiration period for an approval is specified in another section of the municipal code.
- 3. The following land use approvals are exempt from expiration:
 - a. Amendments to Comprehensive Plan maps or text; amendments to Titles 14, 17, or 19; or any other amendment to a land use regulation per Section 19.902.
 - b. Code Interpretations and Director Determinations per Section 19.903.
 - c. Annexations per Chapter 19.1100.
- F. Extensions to Expiring Approvals

The time period during which a land use approval is valid may be extended per Section 19.908.
- G. Modifications to Existing Approvals

A valid land use approval may be modified per Section 19.909.
- H. Appeals of Decisions

Land use decisions may be appealed per Section 19.1009. An appeal of a final decision by the City may be made by a party with standing to other courts.

19.1002 PREAPPLICATION CONFERENCE

19.1002.1 Purpose

The purpose of the preapplication conference is to acquaint the applicant or applicant's representative with the requirements of this code in preparation for submission of a land use application, including relevant approval criteria, development standards, and procedures. The preapplication conference is not an exhaustive review of all potential issues or requirements. Furthermore, the information provided by the City is not binding, and it does not preclude the City from raising new issues or identifying additional requirements during the land use review process.

19.1002.2 Applicability

- A. For Type I applications, a preapplication conference is optional.
- B. For Type II, Type III and Type IV applications, and expedited annexations per Section 19.1104, a preapplication conference is required, with the following exceptions:
 - 1. The Planning Director may waive the preapplication conference requirement for proposals that are not complex or, for some other reason, would not benefit from a formal conference.
 - 2. A preapplication conference is not required for City-initiated Type IV applications.

19.1002.3 Preapplication Conference Procedures

The Planning Director shall adopt administrative rules for how the City processes preapplication conferences. The procedures shall ensure that preapplication conferences are held in a timely fashion and provide a thorough explanation of all required City permits, fees, and approvals for

any given development proposal. The administrative rules shall include standards for scheduling, conducting, and communicating the outcomes of preapplication conferences.

19.1002.4 Preapplication Conference Expiration

- A. A preapplication conference is valid for 2 years. If a land use application or development permit has not been submitted within 2 years of the conference date, the applicant is required to schedule a new preapplication conference prior to submittal. This requirement may be waived per Subsection 19.1002.2.B.1.
- B. An applicant may request additional preapplication conferences at any time. There is no limit to the number of preapplication conferences that may be requested.
- C. If a development proposal is significantly modified after a preapplication conference occurs, the Planning Director may require a new preapplication conference. The City may refuse to accept a land use application or development permit for a significantly altered development proposal until a new preapplication conference is held.

19.1003 APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

19.1003.1 Application Forms and Checklists

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

19.1003.2 Application Submittal Requirements

All application information must be sufficiently detailed and specific to the development being proposed to allow for adequate public review. Furthermore, all of the following items must be submitted for the City to accept the application and initiate completeness review:

- A. Application form, including signature(s) of the property owner or public agency initiating the application.
- B. Deed, title report, or other proof of ownership.
- C. Detailed and comprehensive description of all existing and proposed uses and structures, including a summary of all information contained in any site plans. The description may need to include both a written and graphic component such as elevation drawings, photo simulations, etc.
- D. Detailed statement that demonstrates how the proposal meets all applicable approval criteria, zoning and land use regulations, and development standards.
- E. Site plan(s), preliminary plat, or final plat as applicable.
- F. All materials identified on the Submittal Requirements form, including the signature(s) of the applicant submitting the materials.
- G. Payment of all applicable land use application fee(s) and deposit(s), based on the fee schedule in effect on the date of application submittal.
- H. Copy of a valid preapplication conference report if one was required per Subsection 19.1002.2.

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19.1003.3 Application Completeness Review

- A. The City shall review the application submittal and advise the applicant in writing whether the application is complete or incomplete within 30 days of receipt of the application.
- B. The City may determine an application to be incomplete based on any of the following:
 - 1. Failure to pay the required fees or deposits.
 - 2. Failure to address the relevant approval criteria or development standards.
 - 3. Failure to supply the required information on the Submittal Requirements form.
- C. Incompleteness shall not be based on differences of opinion as to quality or accuracy.
- D. Determination that an application is complete indicates only that the application contains the information necessary to review it for compliance against applicable development standards and approval criteria.
- E. If an application is incomplete, the completeness notice shall list the information that is missing. The applicant is allowed 180 days from the date of first submittal to submit the missing information.
- F. The application will be deemed complete upon receipt by the City of any of the following:
 - 1. All of the missing information.
 - 2. Some of the missing information and written notice from the applicant that no other information will be provided.
 - 3. Written notice from the applicant that none of the missing information will be provided.
- G. The application will be deemed void if the application has been on file with the City for more than 180 days and the applicant has not made the application complete per Subsection 19.1003.3.F. The City will not refund application fees for voided applications. The applicant may resubmit a voided application to the City; however, it will be treated as a new application and will be subject to all current fees, development standards, approval criteria, and submittal requirements.

19.1003.4 Resubmittal of Applications Following Denial

- A. If an application for a land use action has been denied, an application for the same or similar project on the same property may not be resubmitted unless one or more of the following occurs:
 - 1. Two years have passed since the denial became final.
 - 2. Substantial changes are made to the application. Substantial changes to an application have occurred only if the changes resolve all findings for denial of the original application.
 - 3. Standards and criteria relative to the findings of the original denial have changed and now support the application.
 - 4. For Type III or IV decisions, there has been a substantial change in the composition of the City Council and the Council was the final decision-maker. A substantial change in the composition of the Council occurs if fewer than three Council members who voted to deny the original application remain on the Council.
- B. For purposes of Subsection 19.1003.4, a land use approval is denied when the City's final decision of denial is not appealed or is upheld on appeal. An application that was denied

solely on procedural grounds, or which was expressly denied without prejudice, is not subject to this subsection.

19.1003.5 Withdrawal of Applications Under Review

- A. An application may be withdrawn by the applicant at any time prior to issuance of the final decision with the written consent of the property owner or contract purchaser.
- B. If an application is withdrawn after the City has mailed the public notice, the City shall send additional notice that the application has been withdrawn to all affected parties.
- C. The City may refund application fees if staff has, in writing, recommended withdrawal and an application is withdrawn prior to being referred for comment. In all other cases, the City will not refund application fees for withdrawn applications.

19.1003.6 Modifications to Applications Under Review

The procedures of this subsection shall apply if an applicant modifies an application after the City has deemed it complete but prior to issuance of a decision.

- A. Upon receipt of materials that modify an application, the Planning Director shall evaluate the modifications, determine which of the 3 categories listed below describes the modification, and follow the related procedures. This decision is not a land use decision and is not appealable.

1. Substantial Modification

A substantially modified application greatly differs from the application that was deemed complete. Such differences may include the land use; size, height, and/or design of proposed structures; location of uses and structures on the site; or other such characteristics of the proposal. Substantial modifications may alter which approval criteria and development standards are applicable to the development proposal.

The Planning Director shall notify the applicant of this determination and take one of the following actions, at the choice of the applicant:

- a. Allow the applicant to withdraw the original application and submit the modified proposal as a new application. The applicant shall submit all items required by Subsection 19.1003.2 for the new submittal.
- b. Reject the modifications and continue processing the original application. Rejecting a substantial modification does not preclude the applicant from submitting significant or minor modifications.

2. Significant Modification

Significant modifications change an application so that one or more aspects of the modified proposal differ from the original proposal, while the overall proposal remains similar to the proposal that was deemed complete. Significant modifications typically should not alter which approval criteria and development standards apply to the development proposal.

The Planning Director shall notify the applicant of this determination and take one of the following actions, at the choice of the applicant:

- a. Accept the modifications and proceed with the review of the modified application. The applicant shall pay the required fee for review of a modified application per the adopted fee schedule. The Planning Director may repeat any part of the public

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notice or referral process to provide appropriate opportunity for public review of the modifications. The applicant shall also extend the 120-day decision requirement in writing to a date that is sufficient to allow for additional review, public notice, or evaluation by the City.

- b. Reject the modifications and continue processing the original application. Rejecting a significant modification does not preclude the applicant from submitting minor modifications.

3. Minor Modification

Minor modifications change an application so that a limited number of aspects differ from the original proposal and the differences are small relative to the original proposal. The magnitude of a minor modification should be small enough that another review of the proposal by other agencies or the public is not warranted.

The Planning Director shall notify the applicant of this determination and take one of the following actions, at the choice of the applicant:

- a. Accept the modifications and proceed with the review of the modified application. The applicant shall extend the 120-day decision requirement in writing to a date that is sufficient to allow for additional review, public notice, or evaluation by the City.
- b. Reject the modifications and continue processing the original application.

B. In addition to the procedures of Subsection 19.1003.6.A, modifications received after the issuance of a staff report for a public hearing are subject to the following provisions:

1. If an applicant submits a substantial modification and chooses the option listed in Subsection 19.1003.6.A.1.a, the hearing shall be cancelled or suspended without the issuance of a decision by the review authority.
2. If an applicant submits a significant or minor modification and chooses the option listed in Subsection 19.1003.6.A.2.a or 3.a, the Planning Director may do any of the following:
 - a. If the hearing has been opened:
 - (1) Proceed with the hearing and allow a decision. The record may be left open at the request of any party to allow other parties a reasonable opportunity to respond.
 - (2) Continue the hearing to a future date to allow other parties a reasonable opportunity to respond.
 - b. If the hearing has not been opened:
 - (1) Open the hearing as scheduled and proceed per Subsection 19.1003.6.B.2.a.
 - (2) Reschedule the hearing to open at a later date.

19.1004 TYPE I REVIEW

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

19.1004.1 Preapplication Conference

A preapplication conference is not required for Type I applications.

19.1004.2 Type I Application Requirements

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

19.1004.3 Type I Public Notice

Public notice is not required for Type I applications.

19.1004.4 Type I Review Authority

- A. The review authority for all Type I applications shall be the Planning Director.
- B. The Planning Director shall approve, approve with conditions, or deny an application based on applicable approval criteria and development standards.

19.1004.5 Type I Decision

Written notice of the decision for Type I applications shall be provided to the applicant and property owner of record. The decision shall be issued with sufficient time to allow the appeal authority for a Type I application to issue a final decision within 120 days from when the application was deemed complete. The decision shall include the following information:

- A. A brief summary of the proposal.
- B. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
- C. A statement of the facts upon which the review authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.
- D. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
- E. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
- F. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

19.1004.6 Appeal of a Type I Decision

A Type I decision may be appealed by filing a written appeal within 15 days of the date the notice of decision was mailed. The appeal authority for a Type I decision is the Planning Commission. Appeal requirements and procedures are outlined in Section 19.1009.

19.1005 TYPE II REVIEW

Type II applications involve uses or development for which review criteria require only limited discretion. Type II review provides for administrative review of an application by the Planning

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Director and includes notice to nearby property owners to allow for public comment prior to the decision. The process does not include a public hearing.

19.1005.1 Preapplication Conference

A preapplication conference is required for all Type II applications per Section 19.1002. The Planning Director may waive this requirement.

19.1005.2 Type II Application Requirements

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

19.1005.3 Type II Public Notice

A. Referral

Within 7 days after the application has been deemed complete, the City shall provide a copy of all application materials to the parties listed below for their review and comment. If no comments are received within 14 days from the date of referral, the City will presume that no comments will be submitted.

1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 feet of the subject property.
2. Design and Landmarks Committee for applications in downtown zones or involving a designated historic resource.
3. Affected City departments and any governmental agency which is entitled to notice by the municipal code.

B. Mailed Notice

The purpose of the public notice is to provide nearby property owners and other interested parties with an opportunity to review the application and submit written comments concerning the application prior to issuance of the Type II decision. The goal of this notice is to invite relevant parties of interest to participate in the process.

1. Within 7 days after the application has been deemed complete, public notice of the application shall be mailed to the following:
 - a. The applicant and/or the applicant's authorized representative.
 - b. The owner(s) of record of the subject property.
 - c. Owners of record of properties within 300 feet of the perimeter of the subject property.
 - d. Neighborhood district associations to which the application was referred.
2. The public notice shall:
 - a. Provide the case file number and a brief summary of the proposal.
 - b. Provide a brief description of the subject property, including street address, if available, map and tax lot number, and zoning designation.
 - c. State that the City will consider written comments submitted prior to the issuance of the decision, and state that the decision may be issued as early as 14 days from the date of the public notice.

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- d. State the place, date, and time that comments are due.
- e. List the applicable approval criteria and/or development standards against which the proposal will be reviewed.
- f. State that all application materials and applicable approval criteria and development standards are available for review at the City, and that copies can be obtained at a reasonable cost.
- g. Include the name and phone number of the City representative to contact for additional information.
- h. Include the following statement: "Notice to mortgagee, lien holder, vendor or seller: The Milwaukie Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

C. Notice Sign

7 days after the application has been deemed complete, notice of the application shall be posted on the subject property by the applicant. Signs shall be posted on the property in a location which is clearly visible to vehicles traveling on a public street and to pedestrians walking by the property. The number and size of signs shall be appropriate given the size of the property, number of street frontages, and the functional classification of surrounding streets. The City shall provide the applicant at least one sign and the instructions for posting. An affidavit of posting shall be submitted by the applicant and made part of the case file.

19.1005.4 Type II Review Authority

- A. The review authority for Type II applications shall be the Planning Director.
- B. A decision will not be issued sooner than 14 days after mailing of the public notice and referral. Once issued, the decision is final and may only be reconsidered by appeal. Comments submitted within 14 days of the date of the public notice shall be considered. The City may consider comments received after 14 days from the date of the public notice and prior to the issuance of the decision.
- C. The review authority shall approve, approve with conditions, or deny an application based on applicable approval criteria, development standards, and written comments received.

19.1005.5 Type II Decision

- A. The decision shall be issued with sufficient time to allow the appeal authority for a Type II application to issue a final decision within 120 days from when the application was deemed complete.
- B. Written notice of decision shall be sent by mail to the following parties. The date the notice is mailed shall be considered the date of the decision.
 - 1. The applicant and/or the applicant's authorized representative.
 - 2. The owner(s) of record of the subject property.
 - 3. Any group or individual who submitted written comments during the comment period.
 - 4. Any governmental agency which is entitled to notice by the municipal code or has requested notice of the decision.
 - 5. Any group or individual who requested notice of the decision.
- C. The notice of decision shall include:

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

19.1005.6 Appeal of a Type II Decision

A Type II decision may be appealed by filing a written appeal within 15 days of the date the notice of decision was mailed. The appeal authority for a Type II decision is the Planning Commission. Appeal requirements and procedures are outlined in Section 19.1009.

19.1006 TYPE III REVIEW

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

When the Design and Landmarks Committee is required to conduct a design review meeting for applications in the downtown zones per Section 19.907, the design review meeting shall be in addition to the public hearing before the Planning Commission. The procedures for a design review meeting are contained in Section 19.1010.

19.1006.1 Preapplication Conference

A preapplication conference is required for Type III applications per Section 19.1002.

19.1006.2 Type III Application Requirements

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

19.1006.3 Type III Public Notice

- A. DLCD Notice

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For zoning map amendments, the City shall provide notification to the Department of Land Conservation and Development at least 45 days prior to the first public hearing on adoption.

B. Metro Notice

For zoning map amendments, the City shall provide notification to Metro at least 45 days prior to the initial evidentiary hearing on adoption. A Functional Compliance Plan report regarding the map change proposal shall be sent to Metro at least 15 days prior to the first public hearing.

C. Referral

Within 7 days after the application has been deemed complete, the City shall provide a copy of all application materials to the parties listed below for their review and comment. If no comments are received within 14 days from the date of the referral, the City will presume that no comments will be submitted.

1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 feet of the subject property.
2. Design and Landmarks Committee for applications in downtown zones or involving a designated historic resource.
3. Affected City departments and any governmental agency which is entitled to notice by the municipal code.

D. Mailed Notice

The purpose of the public notice is to provide nearby property owners and other interested parties with an opportunity to review the application, submit written comments, and participate in the proceedings concerning the Type III decision. The goal of this notice is to invite relevant parties of interest to participate in the process.

1. At least 20 days prior to the first public hearing on the application, public notice of the application shall be mailed to the parties listed below. Notice requirements specific to zoning map amendments are listed in Subsection 19.1006.3.D.3.
 - a. The applicant and/or applicant's authorized representative.
 - b. The owner(s) of record of the subject property.
 - c. Owners of record of properties located within 300 feet of the perimeter of the subject property.
 - d. Neighborhood district associations to which the application was referred.
2. The public notice shall:
 - a. Provide the case file number and a brief summary of the proposal.
 - b. Provide a brief description of the subject property, including street address, if available, map and tax lot number, and zoning designation.
 - c. State the date, time, and place of the hearing.
 - d. State that any member of the public may submit written comments prior to the hearing and may appear and provide written or oral testimony at the hearing.
 - e. State that only those who have submitted written comments prior to the hearing or participated at the hearing shall be entitled to appeal.

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- f. Provide a general explanation of the requirements for submission of testimony and the procedure for conduct of public hearings.
 - g. State that a copy of the staff report will be available for review at no cost, and a copy will be provided at a reasonable cost, at least seven days prior to the hearing.
 - h. List the applicable approval criteria and/or development standards against which the proposal will be reviewed.
 - i. State that all application materials and applicable approval criteria and development standards are available for review at the City, and that copies can be obtained at a reasonable cost.
 - j. Include the name and phone number of the City representative to contact for additional information.
 - k. Include the following statement: "Notice to mortgagee, lien holder, vendor or seller: The Milwaukie Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."
3. Notice requirements specific to zoning map amendments are as follows:
- a. At least 20 days prior to the first public hearing on the application, public notice of the application that conforms to Subsection 19.1006.3.D.2 shall be mailed to the parties listed below.
 - (1) The applicant and/or applicant's authorized representative.
 - (2) The owner(s) of record of the subject property.
 - (3) Owners of record of properties located within 400 feet of the perimeter of the subject property.
 - (4) Neighborhood district associations to which the application was referred.
 - b. A Measure 56 notice that conforms to Subsection 19.1007.3.E shall be mailed at least 20 days, but not more than 40 days, prior to the first public hearing on the application to all owners of property affected by the proposal.
 - c. For applications that would change the zoning designation of a property that includes all or part of a mobile home or manufactured dwelling park, the City shall mail written notice to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days, but not more than 40 days, prior to the date of the first public hearing on the application. This notice shall conform to the requirements of Subsection 19.1007.3.E.
4. The City shall prepare an affidavit of mailing of notice for the file. The affidavit shall indicate the date that the public notice was mailed to the parties required by Subsection 19.1006.3.D.

E. Notice Sign

At least 14 days prior to the hearing, notice of the application shall be posted on the subject property by the applicant and shall remain posted continuously until the hearing. Signs shall be posted on the property in a location which is clearly visible to vehicles traveling on a public street and to pedestrians walking by the property. The number and size of signs shall be appropriate given the size of the property, number of street frontages, and the functional classification of surrounding streets. The City shall provide the applicant at least one sign

and the instructions for posting. An affidavit of posting shall be submitted by the applicant and made part of the case file.

19.1006.4 Type III Review Authority

- A. The review authority for Type III applications shall be the Planning Commission, as noted in Table 19.1001.5.
- B. The review authority shall approve, approve with conditions, or deny an application subject to a Type III review after the public hearing.

19.1006.5 Type III Decision

- A. The decision shall be issued with sufficient time to allow the appeal authority for a Type III application to issue a final decision within 120 days from when the application was deemed complete.
- B. Written notice of decision shall be sent by mail to the following parties within 7 days of the date of the decision:
 - 1. The applicant and/or the applicant's authorized representative.
 - 2. The owner(s) of record of the subject property.
 - 3. Any group or individual who submitted written comments at or prior to the public hearing.
 - 4. Any group or individual who submitted oral testimony during the public hearing.
 - 5. Any governmental agency which is entitled to receive notice per the municipal code or has requested notice of the decision.
 - 6. Any group or individual who requested notice of the decision, including those who signed the attendance sheet at the public hearing on the application.
- C. The notice of decision shall include:
 - 1. Description of the proposal with sufficient detail to explain the applicant's proposal.
 - 2. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
 - 3. A statement of the facts upon which the review authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.
 - 4. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
 - 5. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
 - 6. A statement that only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal within the 15-day appeal period.
 - 7. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

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- D. In addition to the requirements of Subsections 19.1006.5.A and B, the following requirements apply to zoning map amendments evaluated through a Type III review process.
1. Following the close of the appeal period for a zoning map amendment for which no appeal was filed, the Planning Director shall prepare an ordinance to enact the approved zoning map amendment.
 2. The ordinance shall be publicized per Milwaukie Charter, Chapter VIII, Section 31, subsection (c) to allow a reading of the ordinance by title only. The ordinance shall be brought before Council at the first meeting following the close of the appeal period that allows the notice requirements of Milwaukie Charter, Chapter VIII, Section 31, subsection (c) to be met.
 3. The City Council shall enact the ordinance per the procedures of Milwaukie Charter, Chapter VIII, Section 31, subsection (b), with the reading being by title only.

19.1006.6 Appeal of a Type III Decision

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

19.1007 TYPE IV REVIEW

Applications evaluated through a Type IV review are typically legislative matters, although the City does require a Type IV review for some quasi-judicial matters as well. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments that apply to more than just one property). Quasi-judicial matters, by contrast, involve the application of existing policies to a specific property or proposal. Quasi-judicial applications requiring Type IV review will typically be of a broader scale or impact to the community than quasi-judicial applications requiring Type III review. The Type IV review includes a public hearing before the Planning Commission, who forwards a recommendation to the City Council. The City Council holds at least one public hearing before making a final decision.

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

19.1007.1 Preapplication Conference

A preapplication conference is required for Type IV applications that are initiated by an individual or party other than the City.

19.1007.2 Type IV Application Requirements

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

19.1007.3 Type IV Public Notice

- A. Public Notice for Nonlegislative Applications

Any nonlegislative application being evaluated through a Type IV review shall provide notice that meets the minimum requirements of Subsections 19.1006.3.C-E. The following types of applications are considered nonlegislative:

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1. Nonexpedited annexations, pursuant to Section 19.1102.
2. Amortization of nonconforming uses, pursuant to Section 19.806.

B. Public Notice for Legislative Applications

The purpose of general public notice for legislative applications is to allow the public, organizations, and other governmental agencies a meaningful opportunity to review and comment on legislative proposals.

1. The Planning Director shall provide opportunities for public review and input on a proposal at an early stage in the adoption process. This may include the Type III referral process; open houses; discussions with neighborhood district associations; work sessions with the City Council, Planning Commission, and other City boards and commissions; and direct communication with parties that may be affected by the proposal. This subsection is not prescriptive with regard to the timing or manner of public notice.
2. At least 30 days prior to a public hearing on a legislative matter, the City shall provide notice of the hearing. At a minimum, the notice shall be available on the City web site and at City facilities that are open to the public and that customarily display public information. At a minimum, the notice shall include:
 - a. The date, time, and location of the hearing.
 - b. The case file number and summary of the proposal.
 - c. A map showing the properties that will be impacted by the proposal if applicable.
3. Individual property owners shall be notified if the legislative matter involves a discrete geographic area or specific properties in the City. The Planning Director has the discretion to decide when individual property owner notification is warranted. The content of the notice shall be as described in Subsection 19.1007.3.B.2. The notice parties and timeline shall be as described in Subsections 19.1006.3.D.3.a and 19.1006.3.E.

C. DLCD notice

Notice of a proposal to amend the Comprehensive Plan or Zoning Code or to adopt a new land use regulation shall be mailed to the Department of Land Conservation and Development at least 45 days prior to the initial evidentiary hearing on adoption.

D. Metro Notice

Notice of a proposal to amend the Comprehensive Plan or Zoning Code or to adopt a new land use regulation shall be mailed to Metro at least 45 days prior to the initial evidentiary hearing on adoption. A Functional Compliance Plan report regarding the map change proposal shall be sent to Metro at least 15 days prior to the first public hearing.

E. Property Owner Notice (Measure 56)

At least 20 days but not more than 40 days before the initial evidentiary hearing on a Type IV application, the City shall mail notice to owners of property within the City for which the proposed ordinance, if adopted, may, in the Planning Director's opinion, affect the permissible uses of land for those property owners. The notice shall, at a minimum, include the following information:

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1. A statement in bold type across the top of the first page of the notice that reads substantially as follows: "This is to notify you that the City has proposed a land use regulation that may affect the permissible uses of your property or other properties."
 2. The case file number and/or ordinance number.
 3. A brief summary of the proposal, including how it may, if adopted, affect the permissible uses and value of property in the City.
 4. The date, time, and place of the hearing.
 5. A statement that a copy of the proposal is available for review at the City at no cost and that a copy can be obtained at a reasonable cost.
 6. The name and phone number of the City representative to contact for additional information.
 7. If applicable, a statement that the proposal is a result of an order of the Land Conservation and Development Commission.
- E. The City shall prepare an affidavit of mailing of notice for the file. The affidavit shall indicate the date that the required notice was mailed to the parties required by 19.1007.2.

19.1007.4 Type IV Decision Authority

- A. The review authority for Type IV applications shall be the City Council
- B. For nonlegislative applications, the review authority shall approve, approve with conditions, or deny an application subject to Type IV review after the public hearing.
- C. For legislative applications, the review authority may approve, approve with conditions, amend, deny, or take no action on an application subject to a Type IV review after the public hearing.

19.1007.5 Type IV Recommendation and Decision

- A. The following procedures apply to legislative applications evaluated through a Type IV review.
 1. The Planning Commission shall serve as the recommendation authority for Type IV applications.
 2. The Planning Commission shall conduct an initial evidentiary hearing and provide a recommendation to the City Council within 180 days from when the application was deemed complete.
 3. The Planning Commission may recommend that the City Council deny or adopt the ordinance with or without changes. The Planning Commission shall provide a written justification for the recommendation.
 4. The City shall provide notice of the hearing before the City Council consistent with the public notice requirements in Subsections 19.1007.3.A-B.
 5. At the conclusion of the first public hearing before City Council, the City Council shall take one of the following actions:
 - a. Continue the matter to a date, time, and location certain.
 - b. Remand the matter back to the recommendation authority for additional deliberation.

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- c. Approve the proposal, with or without changes. City staff, with review from the City Attorney, shall prepare the ordinance with written findings that demonstrate adoption will comply with applicable approval criteria.
 - d. Deny the proposal.
 - e. Take no action on the proposal.
- 6. Not more than 5 days after the date of the adoption or denial of the proposal, the City shall provide the required notice to the Department of Land Conservation and Development.
- 7. Within 7 days after the date of the adoption or denial of the proposal, the City shall mail or otherwise provide notice to persons who testified orally or in writing to the recommendation or review authority while the public record was open regarding the proposal. The notice shall include:
 - a. A brief summary of the decision.
 - b. If adopted:
 - (1) The date and number of the adopting ordinance.
 - (2) Where and when the adopting ordinance and related findings may be reviewed.
 - c. A summary of the requirements for appealing the decision to the Land Use Board of Appeals.
- B. The following procedures apply to quasi-judicial applications evaluated through a Type IV review.
 - 1. The Planning Commission shall serve as the recommendation authority for Type IV applications.
 - 2. The Planning Commission shall conduct an initial evidentiary hearing and provide a recommendation to the City Council with sufficient time to allow the City Council to issue a final decision within 120 days from when the application was deemed complete.
 - 3. The Planning Commission may recommend that the City Council deny or adopt the ordinance with or without changes. The Planning Commission shall provide a written justification for the recommendation.
 - 4. The City shall provide notice of the hearing before the City Council consistent with the public notice requirements in Subsections 19.1007.3.A-B.
 - 5. At the conclusion of the first public hearing before City Council, the City Council may take one of the following actions:
 - a. Continue the matter to a date, time, and location certain.
 - b. Approve the proposal, with or without changes. City staff, with review from the City Attorney, shall prepare the written findings that demonstrate compliance with applicable approval criteria.
 - c. Deny the proposal. City staff, with review from the City Attorney, shall prepare the written findings that demonstrate how the application fails to meet any applicable approval criteria.

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6. Written notice of decision shall be sent by mail to the following parties within 7 days of the date of the decision:
 - a. The applicant and/or the applicant's authorized representative.
 - b. The owner(s) of record of the subject property.
 - c. Any group or individual who submitted written comments at or prior to any public hearing.
 - d. Any group or individual who submitted oral testimony during any public hearing.
 - e. Any governmental agency which is entitled to receive notice per the municipal code or has requested notice of the decision.
7. Any group or individual who requested notice of the decision, including those who signed the attendance sheet at any public hearing on the proposal.
8. The notice of decision shall include:
 - a. Description of the proposal with sufficient detail to explain the applicant's proposal.
 - b. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
 - c. A statement of the facts upon which the review authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.
 - d. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
 - e. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
 - f. A statement that only persons who submitted comments or made an appearance of record at a public hearing on the application have standing to appeal the decision by filing written appeal within the 15-day appeal period.
 - g. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.
 - h. A summary of the requirements for appealing the decision to Land Use Board of Appeals.

19.1007.6 Appeal of a Type IV Decision

The City Council decision on a Type IV application is the City's final decision. A Type IV decision may be appealed to the Land Use Board of Appeals consistent with ORS 197 and OAR 661, as may be amended. Only the applicant or persons who submitted comments or made an appearance of record at a public hearing on the application have standing to appeal a Type IV decision.

19.1008 PUBLIC HEARINGS

19.1008.1 Responsibility of City for Public Hearings

The City shall:

- A. Schedule land use applications for review and public hearing before the appropriate review authority as required per Table 19.1001.5.
- B. Provide public notice of the public hearing consistent with the requirements in this chapter.
- C. Prepare minutes for the public hearing that include the decision on the matter and the reasons for the decision.
- D. Provide a copy of the notice of decision to all parties consistent with the requirements in this chapter.

19.1008.2 General Public Notice Requirements

- A. Notice of public hearings shall be provided as described in Sections 19.1006, 19.1007 and 19.1009.
- B. All public notices shall be deemed to have been provided or received upon the date the notice is deposited in the mail or personally delivered, whichever occurs first.

19.1008.3 Rules of Procedure

- A. Public hearings shall be conducted in accordance with the bylaws and rules of procedure adopted for the hearing body by City Council. Additionally, the provisions in Subsections 19.1008.4-13 below apply to all public hearings.
- B. At the commencement of a hearing, a statement shall be made to those in attendance that:
 - 1. Lists the applicable approval criteria.
 - 2. States that testimony and evidence must be directed toward the applicable approval criteria or other criteria in the Zoning Ordinance or Comprehensive Plan that the person testifying believes is applicable to the proposal.
 - 3. States that failure to raise an issue accompanied by statements or evidence sufficient to afford the review authority an opportunity to respond to the issue precludes an appeal of the decision.

19.1008.4 Challenges to Impartiality

- A. Except for Type IV hearings on legislative matters, a party to a hearing or a member of a hearing body may challenge the qualifications of a member of the hearing body to participate in the hearing and decision. The challenge shall state the facts relied upon by the challenger relating to a person's bias, prejudgment, personal interest, ex parte contact or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner.
- B. The challenged person shall have an opportunity to respond to the challenge. The challenge and any response to the challenge shall be incorporated into the record of the hearing.
- C. The hearing body shall deliberate and vote to decide whether or not the challenged person may remain a member of the hearing body for the decision on which their impartiality was challenged. The person who is the subject of the challenge may not vote on the motion.

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19.1008.5 Participation by Interested Officers or Employees

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

19.1008.6 Ex Parte Contacts

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

19.1008.7 Disqualification

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

19.1008.8 Rights of Abstaining or Disqualified Member of the Hearing Body

- A. An abstaining or disqualified member of the hearing body shall be counted for purposes of forming a quorum. A member who represents a personal interest at a hearing may do so only by making full disclosure to the hearing body, abstaining from voting on the proposal, vacating the seat on the hearing body, and physically joining the audience. A member representing a personal interest at a hearing shall not be counted for purposes of forming a quorum.
- B. If all members of a hearing body abstain or are disqualified, all members present after stating their reasons for abstention or disqualification shall be requalified and shall proceed with the hearing.

19.1008.9 Absence of a Member of the Hearing Body

Except for Type IV hearings on legislative matters, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or decision unless the member has reviewed all the evidence received.

19.1008.10 Burden and Nature of Proof

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

19.1008.11 Continuance of Hearing

- A. All documents or evidence relied upon by the applicant shall be submitted to the City and be made available to the public. If additional documents or evidence are provided by any party at the hearing, the hearing body may allow a continuance or leave the record open for at least 7 days to allow the parties a reasonable opportunity to respond. The hearing body may ask the applicant to consider granting an extension of the 120-day decision

requirement if a delay in proceedings could impact the ability of the City to take final action on the application, including resolution of any local appeals.

- B. Prior to closing the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The hearing body shall grant such request by continuing the public hearing or leaving the record open for additional written evidence or testimony pursuant to Subsection 19.1008.11.C below.
- C. If the hearing body grants a continuance, the hearing shall be continued to a date, time and place certain, at least 7 days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open to submit additional written evidence or testimony for the purpose of responding to the new written evidence.
- D. If the hearing body leaves the record open for additional written evidence or testimony, the record shall be left open for at least 7 days. Any participant may file a written request with the hearing body for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearing body shall reopen the record and any person may raise new issues which relate to the new evidence, testimony, or criteria for decision-making.
- E. A continuance or extension granted pursuant to this subsection shall be subject to the limitations of ORS 227 unless the continuance or extension is requested or agreed to by the applicant.
- F. Unless waived by the applicant, the hearing body shall allow the applicant at least 7 days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final arguments shall be considered part of the record, but shall not include any new evidence. For purposes of this subsection, "argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policies believed relevant by the applicant. "Argument" does not include facts. "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the applicant to be relevant to the decision.

19.1008.12 Decision

- A. Following the close of the public portion of the hearing, the hearing body shall approve, conditionally approve, or deny the application. If the hearing is an appeal, the hearing body shall affirm, reverse, or remand the decision that is on appeal.
- B. A final local decision on a Type I, II, III, or nonlegislative Type IV land use application shall be made within 120 days from the date the application was deemed complete, except that, with the agreement of the hearing body and the applicant or appellant, the processing of a matter under consideration may be extended per Subsection 19.1001.7.C.
- C. Notice of decision shall be provided consistent with the requirements established for Type III and IV applications and appeals in this chapter.
- D. The hearing body shall prepare written findings for the decision. The findings shall include:
 - 1. A statement of the applicable approval criteria against which the proposal was evaluated.

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2. A statement of the facts that the hearing body relied upon to determine whether the proposal satisfied or failed to satisfy each applicable approval criterion and development standard.
3. The decision to approve, conditionally approve, or deny a proposal and the reasons for that decision.

19.1008.13 Record of Proceedings

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

19.1009 APPEALS

A decision on the issuance of a Type I, II or III land use application may be appealed by filing a written appeal with the City within 15 days of the date on the notice of decision. If the 15th day falls upon a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next day which is not a weekend or legal holiday. Table 19.1001.5 identifies the review authority and appeal authority for each review type.

19.1009.1 Filing an Appeal

- A. An appeal shall contain:
 1. Date and case file number of the decision being appealed.
 2. Documentation that the person filing the petition has standing to appeal per Subsections 19.1009.4.A, 5.A, and 6.A.
 3. Detailed statement describing the basis of the appeal.
 - a. For appeal of a Type I or Type III decision, the statement must identify which approval criterion or development standard is believed to have been overlooked or incorrectly interpreted or applied and/or which aspect of the proposal is believed to have been overlooked or incorrectly evaluated.
 - b. For appeal of a Type II decision, the statement must identify either an error described in Subsection 19.1009.1.A.3.a, or the manner in which the person filing the appeal was adversely impacted or aggrieved by the decision.
- B. The appeal application fee shall be paid at the time of filing.
- C. If the appeal application and applicable fee are not submitted within the 15-day appeal period, or if the appeal application does not contain the required items specified in Subsections 19.1009.1.A.1-3 above, the petition shall not be accepted by the City. A decision by the City to not accept an appeal within the specified appeal period shall be considered final.

19.1009.2 General Procedures Applicable to All Appeals

Appeal hearings before the appropriate appeal authority as specified in Table 19.1001.5 shall be conducted in accordance with the public hearing provisions in Section 19.1008.

19.1009.3 Types of Appeal Hearings

The City has two types of hearings used for appeals of land use decisions. The general procedures for these hearings are as follows.

- A. Unrestricted De Novo Hearing

An unrestricted de novo hearing allows for the presentation of new evidence, testimony and argument by any party. The appeal authority shall consider all relevant evidence, testimony, and argument that are provided at the hearing by the appellant or any party. The scope of the hearing shall not be limited to the issues that were raised on appeal. The standard of review for an unrestricted de novo hearing is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law.

B. On the Record De Novo Hearing

An on the record de novo hearing does not allow for the presentation of new evidence by any party. New testimony is allowed. New arguments based on evidence already in the record and testimony that is new or already in the record are allowed. The scope of the hearing is not limited to the issues that were raised on appeal. The standard of review for an on the record de novo hearing is a new evaluation of existing evidence, new and existing testimony, and new and existing arguments.

19.1009.4 Specific Provisions for Appeal of a Type I Decision

- A. A Type I decision may only be appealed by the applicant or the applicant's representative.
- B. The City shall mail written notice of the appeal hearing to the applicant or the applicant's representative at least 20 days prior to the appeal hearing.
- C. The appeal hearing shall be an unrestricted de novo hearing.
- D. The decision of the designated appeal authority for appeals of Type I decisions shall be the final local decision.

19.1009.5 Specific Provisions for Appeal of a Type II Decision

- A. A Type II decision may be appealed by the applicant, the applicant's representative, or any other person or organization who is adversely affected or aggrieved by the decision.
- B. The City shall mail written notice of the appeal hearing to all parties who were entitled to Type II public notice under Subsection 19.1005.3.B.1 at least 20 days prior to the appeal hearing.
- C. The appeal hearing shall be an unrestricted de novo hearing.
- D. The decision of the designated appeal authority for appeals of Type II decisions shall be the final local decision.

19.1009.6 Specific Provisions for Appeal of a Type III Decision

- A. A Type III decision may be appealed by the applicant, applicant's representative, or any other person or organization who participated in the original decision by providing either oral testimony or written evidence on the record leading to the decision by the review authority.
- B. The City shall mail written notice of the appeal hearing to all parties who were entitled to Type III public notice under Subsection 19.1006.3.D at least 20 days prior to the appeal hearing.
- C. The appeal hearing shall be an on the record de novo hearing.
- D. The record shall include:
 - 1. A factual report prepared by the Planning Director.

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2. All exhibits, materials, pleadings, memoranda, stipulations, and motions submitted by any party and reviewed or considered in reaching the decision under appeal.
 3. The minutes from the original hearing and a detailed summary of the evidence.
- E. The decision of the designated appeal authority for appeals of Type III decisions shall be the final local decision.

19.1009.7 Remand from the Land Use Board of Appeals

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

19.1010 DESIGN REVIEW MEETINGS

The Design and Landmarks Committee shall conduct a design review meeting when required by Section 19.907 for applications in the downtown zones. The meeting shall occur prior to the initial Planning Commission hearing on the application. Design review meetings provide an opportunity for the Design and Landmarks Committee to hear public comment, evaluate the proposal against relevant approval criteria, and vote on a recommendation to forward to the Planning Commission.

19.1010.1 Responsibility of City for Design Review Meetings

The City shall:

- A. Schedule land use applications for design review before the Design and Landmarks Committee at the earliest available scheduled meeting. If the Design and Landmarks Committee is unable to schedule a design review meeting with sufficient time for the Planning Commission to hold a public hearing in compliance with the 120-day decision requirement, one of the following shall occur:
 1. The applicant may extend the 120-day decision requirement per Subsection 19.1001.7.C in order to accommodate Design and Landmarks Committee review of the application.
 2. If the applicant does not extend the 120-day decision requirement, the Planning Director shall prepare the design review recommendation in lieu of the Design and Landmarks Committee. The Planning Director's recommendation shall satisfy the requirement of Subsection 19.907.8.
- B. Provide public notice of the design review meeting per Subsections 19.1010.2.A - C below.
- C. Prepare minutes for the design review meeting that include the Design and Landmarks Committee recommendation and the reasons for the recommendation.

19.1010.2 Design Review Meeting Notice Requirements

- A. When a design review meeting is required by Section 19.907, the City shall mail written notice of the design review meeting at least 10 days prior to the meeting. The written notice shall be mailed to:
 1. The applicant and/or applicant's authorized representative.
 2. The owner(s) of record of the subject property.
 3. Owners of record of properties located within 300 feet of the perimeter of the subject property.

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4. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 feet of the subject property.
- B. The public notice shall meet the requirements of Subsections 19.1006.3.D and E.
- C. At least 5 days prior to the design review meeting, notice of the meeting shall be posted on the subject property by the applicant, and shall remain posted continuously until the meeting. Signs shall be posted on the property in a location which is clearly visible to vehicles traveling on a public street and to pedestrians walking by the property. The number and size of signs shall be appropriate given the size of the property, number of street frontages, and the functional classification of surrounding streets. The City shall provide the applicant at least one sign and the instructions for posting. An affidavit of posting shall be submitted by the applicant and made part of the case file.

19.1010.3 Rules of Procedure

- A. Design review meetings shall be conducted in accordance with the bylaws and rules of procedure adopted for the Design and Landmarks Committee by City Council. Additionally, the provisions in Subsections 19.1010.4-11 below apply to all design review meetings.
- B. At the commencement of a design review meeting, a statement shall be made to those in attendance that:
 1. Lists the applicable approval criteria.
 2. States that public comment must be directed toward the applicable approval criteria or other criteria in the Zoning Ordinance or Comprehensive Plan that the person commenting believes is applicable to the proposal.
- C. The design review meeting is not a public hearing, but shall be organized in the following manner:
 1. The applicant shall have an opportunity to make a presentation on the application.
 2. The public shall be allowed to comment on the application.
 3. The Design and Landmarks Committee shall deliberate on the application and presentation and shall make findings and a recommendation on the application per Subsection 19.1010.10.
- D. An abstaining or disqualified member of the committee shall be counted for purposes of forming a quorum. If all members of the committee abstain or are disqualified, the Planning Director shall prepare the design review recommendation in lieu of the Design and Landmarks Committee. The Planning Director's recommendation shall satisfy the requirement of Subsection 19.907.8.

19.1010.4 Challenges to Impartiality

- A. A party to a meeting may challenge the qualifications of a member of the committee to participate in the recommendation. The challenge shall state the facts relied upon by the challenger relating to a person's bias, prejudgment, personal interest, or other facts from which the challenger has concluded that the member of the committee cannot participate in an impartial manner.
- B. The challenged person shall have an opportunity to respond orally and in writing to the challenge. The challenge shall be incorporated into the record of the meeting.

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19.1010.5 Participation by Interested Officers or Employees

No officer or employee of the City who has a financial or other private interest in a proposal may participate in the recommendation on the proposal.

19.1010.6 Ex Parte Contacts

Committee members shall reveal any relevant premeeting or ex parte contacts at the commencement of the design review meeting. If such contacts have impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall abstain from voting. In addition, parties who had the communication with the member have the right to rebut the substance of the communication at the commencement of the meeting on the matter.

19.1010.7 Abstention or Disqualification

Disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of the committee who are present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

19.1010.8 Burden and Nature of Proof

The applicant shall bear the burden of proof and persuasion that the proposal complies with all applicable approval criteria and development standards. The applicant and any opponents may submit a set of written findings or statements of factual information which are intended to demonstrate the proposal complies or fails to comply with any or all applicable criteria and standards.

19.1010.9 Continuance of Meeting

- A. A design review meeting may be continued if the Planning Director determines that there is sufficient time to hold a continued meeting before the Design and Landmarks Committee and a public hearing before the Planning Commission within the required 120 days or if the applicant waives the 120-day decision requirement per Subsection 19.1001.7.C.
- B. Design review meeting continuance proceedings shall be per Subsection 19.1008.11.

19.1010.10 Design Review Recommendation

Following the close of the public portion of the design review meeting, the Design and Landmarks Committee shall prepare a written report to the Planning Commission that recommends either approval, approval with conditions, or denial of the application.

- A. The written recommendation shall contain the following:
 - 1. The applicable approval criteria against which the application was evaluated.
 - 2. A statement of the facts that the committee relied upon to determine whether the application satisfied or failed to satisfy each applicable approval criterion and development standard.
 - 3. The decision to recommend approval or denial of the application, and, if the recommendation is for approval, any recommended conditions of approval. Recommended conditions of approval shall ensure conformance with the applicable approval criteria and development standards and mitigate the anticipated impacts, if any, of the proposal.
- B. The recommendation of the Design and Landmarks Committee shall be forwarded to the Planning Commission, which shall consider the recommendation and integrate it into the review process applicable to the proposal.

C. Design and Landmarks Committee recommendations are not appealable.

19.1010.11 Record of Proceedings

The City shall prepare and maintain minutes of all proceedings in accordance with the bylaws adopted for the Design and Landmarks Committee.

CHAPTER 19.1100 ANNEXATIONS AND BOUNDARY CHANGES

[Current Chapter 19.1500 renumbered as Chapter 19.1100. No amendments. Only amended text is shown below. See Exhibit D for complete chapter.]

19.1102.1 Administration and Approval Process

- A. Annexation petitions shall include a request for Comprehensive Plan and zoning designations, and shall be reviewed by the Planning Commission and the City Council in accordance with Section 19.1007 Type IV Review ~~Subsection 19.1011.4 Major Quasi-Judicial Review~~. The Council decision on the proposal shall be considered the "final decision," for purposes of compliance with Metro Code Chapter 3.09.
- B. Notice of the Planning Commission and Council hearings to consider annexation proposals shall follow the procedures of Section 19.1007 Type IV Review ~~Subsection 19.1011.4 Major Quasi-Judicial Review~~ as well as the uniform notice requirements provided in Metro Code Section 3.09.030.

19.1104.1 Administration and Approval Process, Subsection A:

2. A prerequisite to the filing of an expedited boundary change petition is a preapplication conference, at which time the Planning Director shall explain the requirements and provide the appropriate forms. The preapplication conference requirement may be waived by the Planning Director pursuant to Subsection 19.1002.2.B.1 or may be met by requesting a preapplication meeting.

CHAPTER 19.1200 SOLAR ACCESS PROTECTION

[Current Chapter 19.1300 renumbered as Chapter 19.1200. Only amended text is shown below. See Exhibit D for complete chapter.]

19.1204.10 Application and Review Process

An application for a building permit shall include the information necessary to meet the provisions of Subsection 19.1204.4, and shall be processed pursuant to Section 19.1004 Type I Review ~~of this title~~. The Building Official shall refer the plan to the Director for review and approval prior to issuing a building permit, or the Director may delegate this responsibility for review and approval to the Building Official.

Proposed Code Amendment

Municipal Code Title 17 Land Division

CHAPTER 17.04 ADMINISTRATION AND ENFORCEMENT

17.04.110 Determinations of Legal Status

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

- ~~A. All requests for determination of the legal status of parcels or lots shall be submitted in writing to the Planning Director and shall be accompanied by the following:~~
- ~~1. The fee for Director determinations as adopted by the City Council;~~
 - ~~2. Title report including related instruments of conveyance; and~~
 - ~~3. A detailed written request specifically identifying what information is being sought.~~
- ~~B. On review of the request, the Planning Director may require additional information as needed to respond to the request.~~

REFERENCE UPDATES

The following text amendments are also proposed to Title 17:

- All references to Title 19 chapter/section numbers updated.
- All references to review types updated.

Amended text follows.

17.04.100:

Legislative amendments to this title shall be made in accordance with Chapters ~~19.900 and 19.1000~~ and Section 19.902.

17.12.020:

- A. Applications for land division and property boundary changes shall be processed in accordance with Chapter 19.1000 Type I, Type II, and ~~Minor Quasi-Judicial~~ Type III procedures as indicated in this section.

17.12.020.B:

- ~~Minor Quasi-Judicial~~ Type III review may be changed to Type II review, or a Type II review may be changed to a Type I review, upon finding the following:
- ~~Minor Quasi-Judicial~~ Type III review may be required in the following situations:

Table 17.12.020 Boundary Change Review Procedures			
Boundary Change Action	Type I	Type II	Minor Quasi-Judicial <u>Type III</u>

Proposed Code Amendment

17.12.020.D:

1. Applications for preliminary partition plat shall be processed in accordance with ~~Subsection 19.1011.2~~ Section 19.1005 Type II Administrative Review. Should any associated application subject to ~~Minor Quasi-Judicial Type III~~ review be submitted in conjunction with a partition, the partition application shall be processed according to ~~Subsection 19.1011.3~~ Section 19.1006 ~~Minor Quasi-Judicial Type III~~ Review.

17.12.020.E:

Applications for subdivision preliminary plat applications shall be processed in accordance with ~~Subsection 19.1011.3~~ Section 19.1006 ~~Minor Quasi-Judicial Type III~~ Review.

17.12.020.F:

Applications for final plats of partitions and subdivisions shall be processed in accordance with ~~Subsection 19.1011.1~~ Section 19.1004 Type I Administrative Review.

17.16.020.A:

The Planning Director shall review applications for consistency with submission requirements of this chapter. Application submissions that do not meet the requirements of this chapter shall be deemed incomplete for the purpose of ORS 227.178 and Chapter 19.1000 of this code. The Planning Director shall provide to the applicant notice of whether an application is complete or incomplete in accordance with ORS 227.178 and ~~Subsection 19.1004~~ 19.1003.3.

17.28.020:

All land divisions and boundary changes that increase the number of lots shall be subject to the requirements and standards contained in Chapter ~~19.1400~~ 19.700 Public Facility Improvements and the Public Works Standards for improvements to streets, sidewalks, bicycle facilities, transit facilities, and public utilities.

17.28.040.D:

Lot shape standards may be adjusted subject to ~~Chapter 19.700~~ Section 19.911 Variances, ~~Exceptions and Home Improvement Exceptions~~.

17.28.060.A:

Flag lot design shall be consistent with Subsection ~~19.403.11~~ 19.504.9.

17.32.010:

In addition to other requirements, improvements installed by the applicant, either as a requirement of these regulations or their own option, shall conform to the requirements of this title and to improvement standards and specifications in the Public Works Standards and Chapter ~~19.1400~~ 19.700 Public Facility Improvements. The improvements shall be installed in accordance with the following procedure:

17.44.010:

A variance of any provision of this title may only be granted in accordance with ~~Chapter 19.700~~ Section 19.911.

Municipal Code Title 14 Signs

14.32.010 AUTHORIZATION TO GRANT OR DENY ADJUSTMENTS

- A. The Planning Commission may authorize adjustments to the requirements of this chapter per Section 19.1006 Type III Review where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this chapter would cause an undue or unnecessary hardship. The cost of meeting the standard shall not be a basis for granting an adjustment. In granting an adjustment, the Planning Commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the City and otherwise achieve the purposes of this chapter.
- B. The Design and Landmarks Committee shall hold a public meeting and prepare a report for adjustment applications that require Planning Commission review per Section 19.1010 Design Review Meetings. The Planning Commission shall consider the findings and recommendations contained in the report during the public hearing on the proposal. ~~Requests for adjustments in the downtown zones shall receive their first review from the Design and Landmarks Committee. The Design and Landmarks Committee shall make recommendations to the Planning Commission, which is the review authority, and may authorize adjustments to the requirements of this chapter.~~
- C. Adjustments may be granted where it can be shown that there are special and unusual circumstances related to the specific property or sign, the adjustment is consistent with the guiding principles of the Downtown Design Guidelines, and the adjustment meets either of the following criteria:
1. Strict application of this chapter would cause an undue or unnecessary hardship. The cost of meeting the standard shall not constitute a hardship; or
 2. The adjustment serves to protect or enhance significant features such as, but not limited to, trees, historic or culturally significant buildings, or landmark signs.

In granting an adjustment, the Planning Commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the City and otherwise achieve the purposes of this chapter.

REFERENCE UPDATES

The following text amendments are also proposed to Title 14:

- All references to Title 19 chapter/section numbers updated.
- All references to review types updated.

Amended text follows.

14.08.040:

The City Manager or the Planning Director shall have the power and duty to interpret and enforce the provisions of this chapter. ~~An appeal from a ruling by the City Manager or the Planning Director regarding a requirement of this chapter may be made only to the Planning Commission, who may hold a public hearing per the provisions of the Zoning Ordinance, Section 1011.3, Minor Quasi-Judicial Review.~~

Proposed Code Amendment

14.08.050:

An appeal of a ruling by the City Manager, Planning Director, or Planning Commission regarding a requirement of this chapter may be made per Section 19.1009 Appeals. Any action or ruling of the Planning Commission pursuant to this chapter may be appealed to the City Council per the procedures in Section 19.1002 of the Zoning Ordinance.

14.08.090:

- C. The standards of the underlying zone may be increased to the standards in Table 14.08.090.C, pursuant to Minor Quasi-Judicial review by the Planning Commission, as specified in MMC Subsection 19.1011.3 per Section 19.1006 Type III Review.

14.12.010:

- E. Banners on community service use properties, as defined in Subsection ~~19.321.2~~ 19.904.2, not exceeding a total display area of 40 square feet per face per site, and pennants not to exceed a length of 50 feet per site. Such banners and pennants may remain in place for 6 months or less in any 1 calendar year.

14.16.060.H:

3. Awning signs shall not be internally illuminated. Features on an awning sign may be externally illuminated subject to review by the Design and Landmarks Committee, per Section 19.1010 Design Review Meetings, and approval by the Planning Commission, as provided in Subsection 19.1011.3 per Section 19.1006 Minor Quasi-Judicial Type III Review, and according to the following criteria:
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to ~~design~~ review by the Design and Landmarks Committee, per Section 19.1010 Design Review Meetings, and approval by the Planning Commission, per the procedures outlined in Subsection 19.1011.3 Section 19.1006 Type III Review, according to the following criteria:

14.32.020:

- B. The review authority shall hold a public hearing for any adjustment request which is 25% or more of the required standard per the provisions of ~~Ordinance 1712, the Zoning Ordinance, Subsection 19.1011.3~~ Section 19.1006 Minor Quasi-Judicial Type III Review, ~~for any adjustment request which is 25% or more of the required standard.~~ Adjustment requests of less than 25% from the required standard required shall be reviewed by the Planning Director per the provisions ~~outlined in Subsection 19.1011.2, of Section 19.1005~~ Type II Administrative Review, of the Zoning Ordinance. Within 5 days after a decision has been rendered with reference to a request for an adjustment, the City Manager or duly authorized representative shall provide the applicant with notice of the decision of the review authority.

Proposed Code Amendment

MUNICIPAL CODE (non-Planning titles)

REFERENCE UPDATES

The following text amendments are also proposed to the non-Planning titles of the Municipal Code:

- All references to Title 19 chapter/section numbers updated.
- All references to review types updated.

Amended text follows.

2.16.010.A.9:

- f. Review and make recommendation on all applications requesting designation or deletion of a landmark and placement or removal on the cultural resources inventory, as provided under Zoning Ordinance Subsection ~~19.323.5~~ 19.403.4,
- g. Review and make recommendation on all applications requesting designation or deletion of an historic district as provided under Zoning Ordinance Subsection ~~19.323.5~~ 19.403.4,
- i. Review all demolition permits affecting landmarks, as provided under Zoning Ordinance Subsection ~~19.323.8~~ 19.403.7,

3.25.010:

Dwelling Unit. As defined in Section ~~19.103~~ 19.201.

12.16.050:

Relief from any access management requirement or standard of Section 12.16.040 may be granted through a variance process, which requires submission and approval of a Variance land use application. Variance criteria and procedures are located in ~~Chapter 19.700~~ Section 19.911.

12.16.060:

Appeal of any access management requirement or standard of Section 12.16.040 not associated with a land use decision is subject to the provisions of ~~Subsection 19.1011.3~~ Section 19.1006 for ~~Minor Quasi-Judicial Type III~~ Review.

13.14.025.B:

All users of the public stormwater system, and any person or entity whose actions may affect the system, shall comply with all applicable federal, State, and local laws, including ~~MMC 19.322~~ Section 19.402 ~~Water Quality Resource Areas Regulations~~. Compliance with the requirements of this chapter shall in no way substitute for, or eliminate the necessity for compliance with, applicable federal, State, and local laws.

18.04.150.F.2.d:

- (2) The proposed excavation is authorized under applicable municipal code provisions including Section ~~19.322~~ 19.402, ~~Natural Resource Overlay Zone~~ Water Quality Resource Regulations; and

Clean Amendments

Comprehensive Plan

CHAPTER 1 CITIZEN INVOLVEMENT

OBJECTIVE #3—COMMUNICATION

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

Policies

1. Make planning documents available through City offices and public libraries. This includes, but is not limited to Plan inventories, planning background information, Staff reports and minutes of Planning Commission and Comprehensive Plan Review Committee meetings.
2. Keep the public informed of opportunities for involvement in land use planning using a range of available media including newspaper notices, the City website, mailings, the City newsletter, television, and meetings.
3. Seek citizens' input on major land use issues through community organizations, service organizations, interest groups, neighborhood groups, etc. Provide opportunities for citizen participation in preparing and revising local land use plans and ordinances. Provide citizen involvement opportunities that are appropriate to the scale of a given planning effort. Large area plans, affecting a large portion of community residents and groups, require citizen involvement opportunities of a broader scope than that required for more limited land use decisions.
4. City Staff will communicate with citizens about land use policy changes and significant development proposals through a variety of media early on and throughout the decision-making process.
5. Provide timely and adequate notice of proposed land use matters to the public to ensure that all citizens have an opportunity to be heard on issues and actions that affect them.
6. Any citizen testifying at a public hearing regarding a land use issue will receive a copy of the outcome of the hearing and the findings and conclusions upon which the decision was based.

CHAPTER 2—PLAN REVIEW AND AMENDMENT PROCESS

OBJECTIVE #1—AMENDING THE PLAN

5. All proposed Comprehensive Plan text and map amendments will be considered at advertised public hearings before the Planning Commission and City Council.
6. All Comprehensive Plan text and map amendments will be processed per the procedures set forth in the Zoning Ordinance.
7. All Comprehensive Plan text and map amendments will be evaluated based on the criteria adopted in the Zoning Ordinance for approval of Comprehensive Plan amendments.



DRAFT CODE AMENDMENTS COMMENTARY

Land Use and Development Review (LUDR) Tune-Up Project

January 2011 Draft
File No. ZA-10-02 & CPA-10-03

Milwaukie Municipal Code

Title 19 Zoning Ordinance
and
Title 2 Administration and Personnel
Title 3 Revenue and Finance
Title 12 Streets, Sidewalks, and Public Places
Title 13 Public Services
Title 14 Sign Ordinance
Title 17 Land Division Ordinance
Title 18 Flood Hazard Regulations

Milwaukie Comprehensive Plan

Chapter 1 Citizen Involvement
Chapter 2 Plan Review and Amendment Process

Commentary on Proposed Code Amendments

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Notes to the Reader:

This document explains the proposed code amendments. Exhibits B and C of Attachment 1 show the actual proposed amendments.

Proposed amendments that are not substantive in nature are not listed above or explained in this document, e.g. changing “minor quasi-judicial review” to “Type III review.”

ADMINISTRATIVE AMENDMENTS

The proposed amendments revise the names and section references of the City's land use review procedures in Title 19 Zoning Ordinance. Several other titles in the Milwaukie Municipal Code reference these review procedures. The proposed amendments revise these references in other portions of the code based on the proposed changes to Chapter 19.1000 Review Procedures.

The titles where these amendments occur are: Title 2, Administration and Personnel; Title 3, Revenue and Finance; Title 12, Streets, Sidewalks, and Public Places; Title 13, Public Services; Title 14, Sign Ordinance; Title 17, Land Division Ordinance; and Title 18, Flood Hazard Regulations.

Amendments to these titles affect only the references and do not affect the policy or content of regulations in these titles.

INTRODUCTORY PROVISIONS

Chapter 19.100

Chapter 19.100 in the proposed code contains introductory provisions that apply to multiple sections of the zoning code. It does not contain significant policy changes from the current code. The proposed Chapter 19.100 incorporates the current Chapter 19.200, 19.1100, and 19.1200. The current Section 19.1014 that governs permit approvals has also been moved to this chapter.

The proposed chapter codifies two current practices with regard to the application of the zoning map. The first establishes guidelines for determining the edge of zone boundaries along lot lines, right-of-way centerlines, and watercourses (see 19.907.4). The second clarifies that the zones displayed on the zoning map do not directly affect the use or development of the right-of-way.

DEFINITIONS AND MEASUREMENTS

Chapter 19.200

This chapter contains definitions of terms used in the zoning code and guidance about how to make measurements of buildings and setbacks. The existing definitions remain the same as they are in the current code. Four definitions were added:

- Contract purchaser
- High impact nonconforming use (related to the amended nonconforming use chapter)
- Low impact nonconforming use (related to the amended nonconforming use chapter)
- Nonconforming development - this term was previously included in a single definition for

Commentary on Proposed Code Amendments

non-conforming uses and non-conforming development. Nonconforming uses and nonconforming development

The code does not currently have a section for measurements. The provisions in the proposed amendments are comprised of some measurement provisions embedded in the current definitions section and a new definition dealing with horizontal measurement.

BASE ZONES

Chapter 19.300

The vast majority of this chapter is unaffected by the proposed amendments. The proposed changes are as follows:

- Rename the "Residential-Business-Office-Commercial zone" (R-1-B) to the "Residential-Business-Office zone". This name change clarifies that commercial uses are not allowed in this zone; changing the name will not change the types of uses allowed (or not) in this zone.
- Amend Figure 19.310-1 to reflect a portion of the Riverfront Park area that was rezoned from C-L to DOS by Ordinance 1981.
- Delete the current Subsection 19.315.4. This had provisions allowing the Planning Director to review and approve proposed uses in the Manufacturing zone. In the proposed code, this type of request in the Manufacturing zone or any other zone would be handled as a Director Determination, per 19.903.
- Establish a review procedure for development in the Manufacturing zone that is within 120 feet of residential areas. The current code implies that Planning Commission review is involved for such development, but does not clearly identify what type of land use application or review type is involved. The proposed code would handle review of such development in the Manufacturing zone through the new Development Review application.

OVERLAY ZONES

Chapter 19.400

There are no substantive changes to this chapter.

SUPPLEMENTARY DEVELOPMENT REGULATIONS

Chapter 19.500

19.504.6 Transition Area Measures

- The current code requires Planning Commission review of any multifamily, industrial or commercial development project adjacent to lower density zones. The proposed code would handle reviews of this type through the new Development Review process, which would make the Planning Director the decision maker not the Planning Commission. This lower level of review is appropriate given the clear and objective nature of the transitions measures.
- The current code is unclear whether the three transition measures are meant as guidelines or prescriptive requirements. The proposed code makes it clear that the transitions measures are standards that must be met.
- The current code lists three transition measures. The proposed code deletes all but one of these measures. The first measure has been deleted (roadways separating projects) because the City cannot require right-of-way dedication beyond what is legally allowed by law as described in the code (existing Chapter 19.1400). The third measure (gradual density change) has been deleted because a reduction in density has broader policy, procedural, and legal implications and is beyond the purview of a transition area requirement. Changes in density need to be consistent with the Comprehensive Plan.

19.506 MANUFACTURED DWELLING SITING AND DESIGN STANDARDS

The amendments to this section are procedural and do not affect the regulations that apply to manufactured dwellings. The information in Table 19.506.1 is extraneous. The content of the first column in the table is covered by the proposed new phrase in Subsection 19.506.4 that manufactured homes are allowed outright wherever a single family detached dwelling is allowed. The submission of a permit for a permanent residence is required for approval of a temporary dwelling, which therefore defines the zones in which a temporary dwelling could be located. Finally, the manufactured dwelling park provisions already limits the zones in which these parks are allowed.

With the deletion of Subsection 19.506.7.A, placement of a manufactured dwelling will be reviewed as a development permit without a land use application. This is consistent with the review of other residential dwellings. Any land division requires review of the standards in Title 17, and it is not necessary to have this as a separate reference in Subsection 19.506.7.B.

OFF-STREET PARKING AND LOADING

Chapter 19.600

There are no substantive changes to this chapter.

PUBLIC FACILITY IMPROVEMENTS

Chapter 19.700

One amendment is proposed to Subsection 19.703.2. It changes the listing of one type of review for compliance with Chapter 19.700 as its own type of review and moves it to a subset of another review type. The separate listing was somewhat confusing. The amendment does not change the review process or cost from what is in the current code.

NONCONFORMING USES AND DEVELOPMENT

Chapter 19.800

Nonconforming uses and development do not conform to the City's current land use and development regulations either because they were established prior to the enactment of such regulations or because they conformed at the time they were established but applicable City regulations have since changed. The City's current policies on nonconforming uses and development describe property owners' rights to maintain, alter, expand, demolish, and rebuild a nonconforming use, structure, or site improvement. The proposed code replaces the City's existing chapter governing nonconformities in its entirety. It continues to address all of the property owners' rights listed above and adds a process whereby the City may amortize high-impact nonconforming uses.

Summary of Proposed Key Policy Changes:

19.802.1 Nonconforming Uses and Development

Moves the nonconforming determination section out of this chapter and into the proposed Section 19.903. Section 19.903 contains provisions for Director Determinations on nonconforming and other similar determinations. The nonconforming use determination process will still work the same way.

19.804.1 Nonconforming Uses

Continues the existing policy of allowing nonconforming uses to remain, while requiring land use review by the Planning Commission to alter or expand a nonconforming use, or to change one nonconforming use to another nonconforming use.

19.804.2 Nonconforming Development

Deletes the special process, currently in Subsection 19.801, by which a property owner may ask permission to alter or extend a nonconforming structure. The current code requires conforming structures to request a variance in order to vary from development standards, whereas nonconforming structures have the ability to vary from the standards without having to go through the same level of review. This "extra flexibility" runs counter to the purpose of this chapter, which is to nudge nonconformities toward conformance, not to grant special rights. As proposed, alterations to nonconforming structures may still be allowed; however, they would be subject to the same variance process and approval criteria as conforming structures.

19.805 Rebuilding Nonconforming Uses and Development

- Allows more flexibility for replacement of nonconforming uses or structures destroyed by accident or natural hazard. The proposed changes are consistent with the ORS and the City Attorney's recommendation.
- Increases the time frame within which nonconforming uses lose their nonconforming status through discontinuance or abandonment from 6 months to 12 months. The proposed code may result in the perpetuation of some nonconforming uses; however, the current code may have the unintended consequence of resulting in long-term vacancies or underutilization of property, especially in the downtown area. Extending the time frame to 12 months is also consistent with the time frame available to property owners to rebuild a nonconforming structure that was accidentally destroyed, which would be especially important in situations where a nonconforming use occupied a nonconforming structure that was accidentally destroyed.

19.806 Amortization of Nonconforming Uses

Provides a process whereby high impact nonconforming uses may be amortized or otherwise discontinued. Amortization allows for a property owner to realize a return on their financial investment into a nonconforming use (e.g., the cost of capital investments, value of property and site improvements). The amortization process requires that the nonconforming use be discontinued once the owner has received a reasonable return on their investment from the operation of the nonconforming use.

LAND USE APPLICATIONS

Chapter 19.900

The proposed Chapter 19.900 is a new chapter in the zoning ordinance. The main purpose of this chapter is to consolidate the various land use applications in the zoning code into one area. This will make the entire zoning ordinance easier to navigate and make it easier to quickly find information about a land use application. This organizational approach has been used by many jurisdictions in the region who have recently rewritten their codes.

The introductory section in the chapter contains a comprehensive list of all land use applications and identifies where the application is found in the code. The sections within this chapter describe the applicability, procedures, and approval criteria for each land use application. The sections are organized in a consistent manner to make the information easy to navigate.

Some types of applications are not proposed for relocation into this chapter. Such applications were not relocated because they have specific applicability or approval criteria that are explained in nearby sections of code. Applications located in other parts of the code are referenced in the table to aid code users in identifying and locating the applications.

AMENDMENTS TO MAPS AND ORDINANCES

Section 19.902

This section establishes the criteria and process for how the City changes land use regulations and the Comprehensive Plan. The proposed code replaces the City's existing chapter governing map and ordinance amendments in its entirety, but remains very similar to the chapter it is replacing.

Summary of Proposed Key Policy Changes:

19.902.2 Applicability

This section identifies what actions are considered amendments. (Staff anticipates making changes to this section following the January 25, 2011 Planning Commission hearing to allow some discretion regarding what constitutes a comprehensive plan map change. There are a variety of maps in the comprehensive plan, and not all changes to the maps are necessarily amendments that need legislative or even quasi-judicial approval.)

19.902.3 Comprehensive Plan Amendments

The proposed code relocates the Comprehensive Plan amendment approval criteria from Chapter 2 of the Comprehensive Plan. Moving criteria into the zoning code will improve efficiency by having all approval criteria in the same place. Some minor modifications have been made to make the criteria easier to apply during the hearing process.

Commentary on Proposed Code Amendments

(Staff anticipates making changes to this section following the January 25, 2011 Planning Commission hearing to allow for some comprehensive plan map amendments to be processed as quasi-judicial decisions. Currently, all comprehensive plan map amendments are reviewed through the major quasi-judicial process. The anticipated change would have some flexibility to process site-specific map changes as quasi-judicial matters, while using the legislative process for map amendments affecting a larger area. This would parallel the process described for zoning map amendments, as described below.)

19.902.4 Municipal Code Amendments

This subsection contains the process and criteria for zoning text amendments, which are fairly straightforward and remain mostly unchanged from the current code. The proposed code distinguishes between zoning map and zoning text amendments and provides separate approval criteria for each. Approval criteria that more relate to site-specific zoning map amendments were relocated into Subsection 19.902.5.

19.902.5 Zoning Map Amendments

The proposed code changes the way zoning map amendments are processed. As proposed, zoning map amendments (or zone changes) are treated differently depending upon the size of the area proposed for rezoning. Changes that affect large geographic areas are considered legislative policy decisions. Changes to smaller areas are considered quasi-judicial in nature because they apply existing policies to specific properties. Legally, there is no definitive threshold for what constitutes a legislative zone change versus a quasi-judicial zone change. The review process in the proposed code reflects this variability but provides some guidance and defers to the City Attorney to make the decision about which process is appropriate.

19.902.5.B

The proposed code modifies the zoning map amendment approval criteria to focus less on the specifics of what development might occur within a zone and more on the general compatibility of the proposed zone in relation to existing surrounding zones. It is presumed that any future development would comply with the relevant standards and criteria required by its designated zone.

CODE INTERPRETATIONS AND DIRECTOR DETERMINATIONS

Section 19.903

The current code includes provisions for both director's interpretations of code provisions and director's determinations of the status of structures, uses, and lots with regard to their legality. Because these processes are similar in nature and level of review, the proposed code places both of these provisions into one section. The proposed section adds new language to interpretations and determinations to establish the applicability, procedures, and approval criteria for these processes.

Summary of Proposed Key Policy Changes:

19.903.1 Purpose

The purpose statement establishes parameters for Code Interpretations by stating that an interpretation is not a substitute for the legislative process of amending the code, but that it can be used for interim situations where a code change is needed until the legislative amendments can be made.

19.903.3 Review Process

- The Code Interpretation process includes factors on which a code interpretation can be based to aide the decision process (see 19.903.4.A).
- The Code Interpretation process includes notice of a Code Interpretation to the Planning Commission and City Council (19.903.3.B.2). The current code does not require this notice.
- The Director's Determination process incorporates two existing types of determinations (nonconforming status and legality of lots) and adds two other types (similar use determinations and an 'other' category). Each type has its own decision criteria (see 19.903.B.1-4). This change empowers the Planning Director to make these types of determinations and is in direct response to the community's requests for these types of determinations.

COMMUNITY SERVICE USES

Section 19.904

There are no substantive changes proposed to the Community Service Use section. It is being relocated from the chapter describing use zones and overlay zones to the chapter containing land use applications. This move recognizes the fact that a community service use is a type of use and not a zone. The process for approving a community service use is akin to the process for approving a conditional use and does not result in the application of a new zone or overlay zone to a property.

CONDITIONAL USES

Section 19.905

The City's policies on conditional uses currently reside in Chapter 19.600, Conditional Uses. The proposal deletes the old Conditional Use chapter and creates a new set of policies in the Applications chapter. The proposed code does not change the types of uses that require Conditional Use approval. The proposed code does make important changes to how the City would consider minor changes to existing conditional uses, evaluate the status of existing conditional uses, and 'sunset' discontinued conditional uses.

Summary of Proposed Key Policy Changes:

19.905.3 Review Process

For proposed new conditional uses, Planning Commission approval would still be required. The proposal also establishes the review process for other types of proposals involving a conditional use, such as a major or minor modification to an existing conditional use. These new review requirements are analogous to the existing review requirements for modifications to Community Service Uses.

19.905.5 Conditions of Approval

The proposed code authorizes the decision maker(s) to impose conditions that are necessary to make a conditional use compatible with its surroundings. The list is intentionally broad so as to provide guidance to decision makers and to inform code users about the broad range of conditions that may be considered. The current code has the same basic policy approach but with a much shorter list of possible conditions.

19.905.7 Review of Existing Conditional Use Permits

The proposed code clarifies and slightly revises the City's current procedures for handling conditional uses that are out of compliance with their approvals or are having unanticipated impacts. The general approach is to notify the conditional use operator and have them voluntarily correct the situation. The matter may be elevated to the Planning Commission for review if the owner does not correct the problem or if the correction is ineffective.

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

The proposed code clarifies the current code regarding de facto conditional uses. It grants conditional use status to a legally established use that is listed as a conditional use in the current code but did not undergo conditional use review.

The proposed code includes new provisions regarding the expiration of a use's conditional use status. Under the current code, conditional uses do not have an expiration date if the use changes or is discontinued. The proposed code would automatically remove conditional use status for properties that undergo a change in use. It would also remove conditional use status for properties where the use is discontinued for 3 years. The discontinuation

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clause applies only to non-residential conditional uses that receive conditional use approval or become de facto conditional uses after the proposed regulations are enacted.

19.905.9.A Standards Governing Conditional Uses

- There are no amendments to most of the development standards governing specific conditional uses.
- The standards for a Type II Accessory Dwelling Unit have been moved from this portion of the code to Subsection 19.910.2 along with other standards and application procedures for residential land use applications.
- One policy change to the standards governing conditional uses amends the yard requirements for conditional uses in residential zones. Instead of requiring that conditional uses in residential zones have a yard width equal to at least two-thirds the height of the principal structure, the proposed code allows for the Planning Commission to impose additional yard width requirements as a condition of approval to address impacts related to building height, mass, and proximity to residential land uses. Staff believes that the current approach is unnecessarily rigid and ineffective and that the proposed approach effectively empowers the Planning Commission to determine the most appropriate yard width requirements on a case-by-case basis.

DEVELOPMENT REVIEW

Section 19.906

Adding the Development Review section to the zoning ordinance would change how the City performs its development review function, particularly for larger projects. Development Review is a new application whose purpose is to ensure compliance with the standards and provisions of the City's land use regulations through an efficient review process that effectively coordinates the City's land use and development permit review functions. Under the current code, the City processes a sizeable number of permits on an ad-hoc basis at the staff level. This review sometimes includes decisions on discretionary criteria that should occur with some level of public notice. The Development Review process will also provide structure to an ad hoc process that creates frustration and uncertainty for developers, contractors, and property owners.

The proposed Development Review application formalizes the City's current practices where appropriate, and allows for public notice where appropriate. It is not meant to add additional process, expense, or time to the permit approval process any more than is necessary to adequately and legally implement the City's land use and development standards.

In most instances, the average property owner who is seeking permits from the City would not experience any change in the way the City issues permits. Some types of projects that currently only require building permit review, such as construction of new buildings in the Manufacturing zone or Business Industrial zone, would trigger Type II Development Review under the proposed code. This is appropriate because these projects are being asked to comply with criteria that are not clear and objective. The Type II Development Review process will enable staff to appropriately evaluate and condition a development project to mitigate impacts or meet discretionary design standards.

Establishing a development review process to handle discretionary standards will also allow the City to adopt more discretionary standards in the future. These types of standards, which typically apply to commercial and multifamily development, require greater flexibility and judgment in the review process, and can ultimately lead to projects that have higher quality design and are more in keeping with the character of the existing area.

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The new development section outlines the procedures for the review and indicates that approval is contingent upon meeting all applicable development standards. The specific development standards that any given project would have to meet will still reside elsewhere in the code. The majority of the City's development standards reside in the following five chapters:

- Base zones (19.300)
- Overlay zones (19.400)
- Supplementary Development Regulations (19.500)
- Off-street parking and loading (19.600)
- Public Facility Improvements (19.700)

Summary of Proposed Key Policy Changes:

19.906.2.A Type I Review

The proposed code requires Type I Development Review prior to or concurrent with the issuance of development permits. As proposed, development projects triggering Type I Development Review are reviewed against standards that are clear and objective and/or require a minimal amount of professional judgment. Setback requirements are an example of a clear and objective standard because compliance can be verified with an objective measurement. An example of a standard requiring limited professional judgment is the on-site walkway standard that exempts required walkways for areas "... between buildings or portions of a site that are not intended or likely to be used by pedestrians. ..." The meaning of this regulation is clear though its implementation does require the exercise of some professional judgment.

In some instances, a Type I Development Review may be the first and only land use review required for a development project. In other instances, a Type I Development Review may be a project's second land use review and come after a project's approval by the Planning Commission or Planning Director. In the case of the latter, the Planning Director may waive the follow-up Type I Development Review if the project adequately addressed all applicable development standards in the initial land use review process. Whether it is a project's first or second land use review, the purpose of the Type I Development Review is to ensure that a project meets all applicable development standards prior to the issuance of development permits.

19.906.2.B Type II Review

The proposed code requires Type II Development Review in a limited number of situations or upon the request of an applicant. The primary difference between Type I and Type II review is that Type II review includes evaluation of a development project against discretionary standards or criteria. Type II reviews allow for more notice and more detailed review and, as proposed, would typically be triggered by larger-scale development

projects. Type II review, as proposed, would not typically be required for development proposals that required other Type II or III land use reviews.

19.906.2.C Exemptions

Certain types of development are proposed to be exempt from the development review process. Exemptions are proposed because these types of development have either a limited review by the Planning Department (e.g. tenant improvements, right-of-way work, or temporary events), or are reviewed against a limited number of clear and objective development standards. Development exempted from the development review application is still required to comply with all applicable development standards prior to the issuance of development permits.

19.906.3 Review Process

The proposed code establishes how the development permit review application fits within the overall land use approval and development permit review processes. Development review may be a concurrent application or may be required after other land use approvals are obtained. For most large development projects, a development review application will likely be needed prior to the issuance of development permits.

19.906.4 Approval Criteria

The proposed code provides appropriate approval criteria for Type I and II development review applications. They facilitate a thorough review of a development project against all applicable development standards and conditions of approval from prior land use approvals.

Type I reviews are a review against standards that are clear and objective or require a minimal amount of professional judgment. This should be a straightforward "checklist" type of review to ensure that a project meets the numerical development standards of the code.

Type II reviews likely include a review against clear and objective standards, but also include a review against subjective and/or context-sensitive criteria. Since the Type II review process provides for referral and public notice, nearby residents, neighborhood district associations, and other agencies have the chance to comment on whether the approval criteria are met.

DOWNTOWN DESIGN REVIEW

Section 19.907

There are no substantive changes proposed for this section of code. In the existing code, it is located at the end of the section for the downtown base zones. Since it is a discrete type of land use application, it is more appropriately located in the new applications chapter.

EXTENSIONS TO EXPIRING APPROVALS

Section 19.908

This would be a new set of policies to address an extension of the time frame for which an approval is valid. As proposed, if an approved land use decision has not been utilized after a specified period of time, it would automatically expire. This is intended to protect the community from some of the problems associated with land use approvals that don't expire, which include the following:

- Project construction is delayed for a long period of time resulting in extended disruption to neighbors and visual blight.
- Surrounding conditions change between land use approval and construction, and the project has unmitigated impacts on the neighborhood, a natural resource area, or the transportation network.
- Neighborhood surprised when the project is constructed years after an approval has been issued.

To balance the need and desire for expiration of approvals, the proposed code includes a formal process for reviewing and possibly extending the time period during which land use approvals are valid on a case-by-case basis.

Summary of Proposed Key Policy Changes:

19.908.3 Review Process

- Allows for the extension of approvals, but only if requested and approved before the permit approval's expiration date.
- Provides for Type II review process for applications that were originally approved through either the Type II or III review process. This will provide for the most appropriate public notice and opportunity for comment. Applications originally approved through the Type I review process would have their extension requests processed through the Type I process.

19.908.4 Approval Criteria

- Allows for an extension only after it has been determined that conditions in and around the proposed development site are substantially the same.

MODIFICATIONS TO EXISTING APPROVALS

Section 19.909

Usually, projects that involve construction seek land use and development review permits when the project design is 30-60% complete. It is not uncommon for development plans to change after land use approval and during development permit review as the applicant completes more detailed design and engineering plans. Though the City expects some evolution and change to development plans after land use approval, the City has not had a clear policy on how to handle these changes. The current proposal creates a formal process for handling plan modifications. It codifies staff's existing practice of reviewing some modifications administratively and sending others back to Planning Commission for review.

Summary of Proposed Key Policy Changes:

19.909.3 Review Process

- Allows the Planning Director to determine when a modification is substantial enough to warrant more formal review and approval.
- Creates two categories of modifications—major and minor—and requires Type III review of major modifications and either Type I or II review for minor modifications. For minor modifications, the proposed code allows the Planning Director to process the application through the review level that provides for the most appropriate public notice and opportunity for participation.
- Limits the scope of review of the modification to the modified portions of the development proposal and any other portions of the development proposal that are affected by the modification.

RESIDENTIAL DWELLINGS

Section 19.910

This section of code organizes 4 existing land use application types into one section. The common element is that these are all types of single family residential development that require land use approval. No substantive changes are proposed to any of the application types.

VARIANCES

Section 19.911

Variances are meant to provide relief from specific code provisions that prevent reasonable development or impose undue hardship. The proposed code replaces the City's existing variance chapter in its entirety with the intention of fixing the following problems:

- The existing code does not contain a purpose statement for variances.. A purpose statement is important as a guide to the City's policy toward granting variances, and provides context for the overall variance process.
- The existing approval criteria for variances are extremely rigid and allow for limited discretion even when being reviewed by the Planning Commission. They do not allow variances that would result in better projects and/or have indiscernible impacts, and they have the effect of not allowing small adjustments to standards on any but the most complex sites.
- Type II and Type III variances currently have the same approval criteria, which makes administrative variances equally as difficult to approve as variances granted by the Planning Commission.
- The existing home improvement exception standards are unclear, overly complex, and unfair. They create a special kind of variance that is available only to a certain subset of homeowners (not available to commercial or rental property).

Summary of Proposed Key Policy Changes:

The table on the following page summarizes the differences between the current and proposed variance provisions. The variances allowable for single family dwellings under the existing home improvement exception process are not reflected in the comparison.

Variance Provisions		Current Code	Proposed Amendments
Type II Variances	Eligible Variances	10% of any numeric standard	40% of side yard 25% of front, rear, or street side yard 10% of lot coverage minimum vegetation 10% of lot width or depth 10% of a lot frontage standard
	Approval criteria	Property has unusual conditions over which the applicant has no control No feasible alternatives and is the minimum necessary for reasonable property use Impacts are mitigated as practicable	Not detrimental to surrounding properties Will not interfere with future transportation or utility projects Variance sustains integrity of existing site design Impacts are mitigated as practicable
	Review Authority	Planning Director	Planning Director
Type III Variances	Eligible Variances	Any provision of zoning or land division code (use exceptions processed separately)	Most provisions of zoning or land division code, some exceptions (19.911.2) and (use exceptions processed separately)
	Approval criteria	Same as Type II approval criteria	<u>Discretionary criteria:</u> Variance meets 1 or more: Avoids/minimizes impacts to surrounding properties; has desirable public benefits; and/or creatively responds to built or natural environment Impacts are mitigated as practicable <u>Hardship Criteria:</u> Minimum necessary to allow reasonable economic use Minimum necessary to allow uses similar to other comparable properties Impacts are mitigated as practicable
	Review Authority	Planning Commission	Planning Commission

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19.911.1 Purpose

Adds a purpose statement.

19.911.2 Applicability

Clarifies which standards are eligible for variances.

19.911.3 Review Process

- Allows small variances that are not detrimental to surrounding properties through a Type II review process, such as small variances to lot coverage and yard requirements. It does not allow variances to building height to be reviewed through the Type II process.
- While the proposed Type II variance allows for some of the variances that would currently be allowed as a Home Improvement Exception (HIE), it requires other variances that would have been eligible for a HIE to go through a Type III variance process.

The HIE allows for up to a 50% reduction in a required front, street side, or rear yard. The proposed Type II variance allows for only a 25% reduction, and no less than a 15 foot setback. An R-7 property would only be eligible for a 5 foot front or rear yard reduction in the proposed code, where a 10 foot reduction would be possible under the existing HIE provisions. R3, R2 and R1 properties that were eligible for an HIE for front or rear yard reductions would not be eligible for a Type II variance because their minimum required front and rear yard depth is already 15 feet. Any front or rear yard variances for these properties would require Planning Commission review.

- Allows variances that improve the function or design of a project through a Type III review process.

19.911.4 Approval Criteria

- Creates new approval criteria for both types of variances that allow for an appropriate amount of discretion based on the associated level of review.
- Folds the existing home improvement exception provisions into the new variance approval criteria, which have the effect of allowing comparable types of requests through the new streamlined variance approach.

19.911.5 Use Exceptions

- 19.911.5.A adds a provision that the existing use exception process cannot be used to allow a use that is prohibited by the underlying base zone.
- The remaining criteria have been amended for clarity. The existing criteria contained archaic language that was very difficult to apply even on a discretionary basis. The proposed amendments retain two basic criteria that evaluate if the request arises from a unique situation that the property owner cannot control and whether it is

possible that a permitted or conditional use could use the property.

REVIEW PROCEDURES AND ADMINISTRATION

Chapter 19.1000

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

The City's current review procedures are problematic in a number of ways. Generally, the existing language tends to be inconsistent, unclear, and incomplete. Furthermore, some of the procedural language may not be fully in compliance with state statutes that regulate land use review. The intent of these proposed amendments is to clarify and streamline the City's review procedures and ensure consistency with state statutes. The current proposal replaces the City's existing Administrative Provisions chapter (Chapter 19.1000) in its entirety.

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

- Type I Review: Administrative review process, decided by Planning Director
- Type II Review: Administrative review process with public notice, decided by Planning Director
- Type III Review: Quasi-judicial review process with public notice and hearing, decided by Planning Commission
- Type IV Review: Legislative review process with public notice and hearing, decided by City Council; also used for some quasi-judicial reviews

The current Major Quasi-judicial land use review is used by the City solely for processing Zoning Map and Comprehensive Plan map amendments and requires a hearing before both the Planning Commission and City Council. Having a separate land use process for amendments is redundant and can create additional, unnecessary process (i.e., two public hearings when one is sufficient). The draft language proposes to process map amendments through either the Type III or Type IV procedure, depending on the scale and scope of the amendment, which will provide for a more streamlined review process for small-scale zone changes.

For each review type, the proposed code provides the following information in a consistent format:

- Preapplication conference requirements

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- Application requirements
- Public notice requirements (if applicable)
- Decision authority
- Decision-making requirements
- Appeal procedures

The following is a more detailed overview and summary of key changes being proposed for each section of this chapter:

Summary of Proposed Key Policy Changes:

Section 19.1001 General Provisions

This section introduces the four land use review types, outlines who can initiate a land use application, provides an overview of how applications are reviewed, and establishes a general process for how decisions are made.

One notable proposed change in this section is that it provides for the automatic expiration of approved land use decisions that have not been utilized after a specified time period. Depending on the type of application, approvals will generally expire after two to four years unless an extension is granted by the City. Extension requests will require a separate application pursuant to proposed new language in Chapter 19.908. This is a significant change from the current code language, which only addresses certain types of approvals (conditional use, exceptions/variances, and nonconforming use approvals) and provides just six months before they expire.

A second important change is the appeal authorities for land use decisions (see Table 19.1001.5). As proposed, the Planning Commission would be the City's final authority for appeals of Type I and Type II decisions. Currently, appeals of Type I and Type II decisions may be appealed to Planning Commission and then to City Council. The appeal authority for Type III and Type IV decisions is unchanged.

Section 19.1002 Preapplication Conference

The intent of this language is to codify the City's existing practice of requiring a preapplication conference for certain types of land use applications. The proposed language does not represent any changes to current policy, but simply clarifies which types of land use reviews require a preapplication conference. Generally, a preapplication conference is optional for Type I applications and is required for Type II, III and IV applications. The City may waive the preapplication conference requirement for proposals that are not considered complex.

Section 19.1003 Application Submittal

This section establishes submittal requirements for applications, outlines the

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completeness review process, and addresses resubmittal of previously denied applications. Much of the city's existing code language pertaining to application submittal is located in various parts of the code. This new language is intended to consolidate submittal requirements into one section.

This section also contains proposed language regarding the procedures for handling modifications to land use applications that are currently under review by the City (see Section 19.1003.6).

One noteworthy change in the proposed language is that it allows an applicant 180 days to submit additional materials for an application that has been deemed incomplete by the City (see Section 19.1003.3.E). The current code allows only 15 days; however, state statute (ORS 227.178) requires 180 days before an application can be considered void.

Section 19.1004 Type I Review

This section lays out the procedure for a Type I land use review, which is an administrative review that does not require public notice or a hearing. The proposed language for a Type I review is generally similar to the City's current language in terms of noticing requirements, decision authority and appeals. One departure from the existing language relates to the decision timelines; current code states that the City will issue a decision within 10 days of application submittal. The proposed language states that the City has 120 days to issue a final decision (see Section 19.1004.5). The 120-day period is consistent with state law. While the City will strive to issue Type I decisions quickly, it is more appropriate to use state law in the code rather than the City's internal customer service goals. The 120-day period is used consistently throughout all review types in the proposed Procedures chapter.

Section 19.1005 Type II Review

For a Type II review, the proposed code retains the general level of notice and process as the current code. Noteworthy changes to the Type II review are:

- Proposed language requires the applicant to post a sign on the subject property to display relevant development proposal information (see Section 19.1005.3.C).
- Proposed language codifies City staff's current practice of referring applications to Neighborhood District Associations for their review and comment (see Section 19.1005.3.A).
- Proposed language eliminates the ability of the public, Planning Director, and/or Design and Landmarks Committee to elevate an application to the Planning Commission for a hearing. However, it continues to allow an applicant or aggrieved party to appeal the decision to the Planning Commission for a hearing.
- Proposed language provides notice of application submittal in lieu of tentative notice of decision, effectively maintaining the same level of opportunity for public comment,

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notice of decision, and appeal (see Section 19.1005.3). Mailing a notice rather than a tentative notice of decision provides staff a better opportunity to send a clear and concise notice to citizens. It may also reduce the processing time for a Type II decision by two weeks.

Section 19.1006 Type III Review

The following changes are included in the proposed Type III procedure:

- As mentioned previously, the Type III procedure combines the City's existing Minor and Major Quasi-judicial procedures into one. This affects how changes to the Zoning Map are processed. In the proposed code, Zoning Map amendments that affect only small areas can be processed as a Type III application. This will allow some zoning map amendments to be heard and reviewed only by the Planning Commission, instead of requiring a hearing before the Planning Commission and then before City Council. The Type IV procedure presented in the next section will be used to process legislative (broader impact, multiple parcels) Zoning Map and/or Comprehensive Plan map amendments.
- Proposed language eliminates any requirement for a newspaper notice. Though required only for two specific land use reviews, the City's practice has been to publish a hearing notice in the newspaper for all Type III hearings. City staff has determined that newspaper notice is not an effective or comprehensive method for issuing public notice.
- Language regarding the Design and Landmarks Committee (DLC) as a decision making body has been removed. The proposed code clarifies that the DLC's public meeting process is an additional step in the review of downtown design review applications (see Section 19.1010).
- Proposed language codifies City staff's current practice of referring applications to Neighborhood District Associations for their review and comment (see Section 19.1006.3.B).

Section 19.1007 Type IV Review

The proposed Type IV section contains a considerable amount of new language relative to the existing code and is intended to clarify and strengthen the legislative process for the City. The proposed language is consistent with the existing code in that it requires two public hearings, one before the Planning Commission and one before City Council. Public noticing requirements are also consistent with current practice and are codified in greater detail in this proposal, including DLCD, Measure 56, and Metro noticing requirements (see Section 19.1007.2).

(Staff anticipates making changes to this section following the January 25, 2011 Planning Commission hearing. The currently proposed Type IV review contains one process for review of legislative applications and another for review of quasi-judicial applications.

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Staff anticipates revising the chapter to include a separate review type to allow for Planning Commission recommendation and City Council decisions on quasi-judicial applications. This would be similar to the current Major Quasi-judicial process in MMC Subsection 19.1011.4. This would primarily be use for comprehensive plan and zoning map amendments, and would also include amortization of high impact nonconforming uses.)

This section also contains a number of changes from current code and City practice, including:

- More directive language regarding public involvement. Aside from newspaper notice, the current code has almost no requirements for public notice or involvement in legislative amendments. The proposed language eliminates the newspaper notice requirement, and instead adds language that requires opportunity for public review and input at an early stage in the amendment process (see Section 19.1007.3.B). The proposed code language is not prescriptive about what must be done, but is clear that substantive public involvement is required.
- Proposed language clarifies that any person, organization, or governmental body can initiate a legislative application. This is consistent with current practice but is not explicit in the current code.
- Proposed language requires that the initial public hearing before the Planning Commission be held within 180 days of a complete application (see Section 19.1007.5.B). The 180-day timeline is consistent with state law.

Section 19.1008 Public Hearings

The proposed Public Hearings language outlines the process for public hearings in the City. This section is intended to clarify and consolidate such provisions and ensure consistency with state statutes. Generally, the City's hearing bodies rely upon their bylaws for specific rules of procedure. This proposed language is more general in nature and contains provisions that should apply at all public hearings, regardless of the hearing body. There are no significant departures from existing practice represented in the proposed language; rather, it is intended to consolidate language and provide a more comprehensive explanation of the hearings process. The section provides clarification on the following:

- Proposed language states that the City is responsible for scheduling hearings, providing public notice, preparing minutes, and mailing decision notices for all hearings.
- Proposed language includes provisions for challenging the impartiality of a member of the hearing body at a hearing (Section 19.1008.4).
- Proposed language explains ex-parte contact and the rules for disqualification of a hearing body member (Sections 19.1008.6-7).
- Proposed language outlines the provisions for continuance of a hearing (see Section 19.1008.10).

Section 19.1009 Appeals

The proposed Appeals section outlines the conditions under which an appeal may be filed and provides specific information for different types of appeals (Type I, Type III, etc.). The proposed language clarifies the appeals process and ensures consistency with state requirements. The following is a summary of the appeals processes for different review types:

- Parties that can appeal a decision are specifically listed in the appeal procedures for each review type. The requirements for filing an appeal are also included (see Section 19.1009.1).
- The code establishes two types of appeal hearings that define the scope of the appeal, standard of review, and rights of parties to raise new arguments (see Section 19.1009.3).
- Appeal of a Type I decision can only be made by the applicant and goes to the Planning Commission for a public hearing (Section 19.1009.3).
- Appeal of a Type II decision may be initiated by the applicant or any person/organization who feels adversely impacted or aggrieved by the decision. This language is consistent with state law. Type II appeals go to a public hearing before the Planning Commission for the final, local decision (Section 19.1009.4). This is a change from the current code, as it would give Planning Commission the final decision making authority on ministerial decisions that are appealed. Any appeal after that would go to the Land Use Board of Appeals (LUBA).
- Appeal of a Type III decision may be made by the applicant or a party with standing (Section 19.1009.5). Standing is granted to any party who participated by providing oral testimony or written comment/evidence on the record during the hearing or public comment period. This language is consistent with state law. A Type III appeal goes to public hearing before the City Council for a "review of the record." This is a change from the current code, as it would limit the scope of the appeal to what was in the record. New arguments would be allowed, but new evidence would not be allowed. Any appeal after that would go to the Land Use Board of Appeals (LUBA).

Section 19.1010 Design Review Meetings

This section of the proposal would add a new section specific to the Design and Landmarks Committee and their consideration of downtown design review applications. Many of the procedures listed in this section are slight modifications of the hearing procedures in Section 19.1008. The key provisions of this new section are:

- Design review meetings have notice requirements similar to the notice requirements for a Type III application. The mailed notice would come 10 days before the meeting (see Section 19.1010.2).

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- The requirements for a design review recommendation are specified (see Section 19.1010.10).
- Rules have been added to ensure that a design review meeting can be held within the timeframe required by the 120-day land use clock. If a meeting cannot be scheduled in a timely manner and an extension to the 120-day clock is not granted by the applicant, the proposed code authorizes the Planning Director to issue the design review recommendation (see Section 19.1010.1).

Related Code Amendments

Since the Procedures chapter works in concert with many other provisions of Title 19, amendments to this chapter could not be done in isolation. Consequently, additional amendments to other chapters are being proposed to effectively implement the new Procedures chapter and improve the overall functioning of Title 19. These related amendments are located in the proposed Chapter 19.900 and are summarized below so as to give the reader a more comprehensive understanding of all the procedural changes being proposed and how they relate to one another. Actual draft language for these related sections is provided separately.

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

Extensions to Expiring Approvals. The purpose of this Type I and Type II application is to provide for an appropriate and efficient review process for extending the time period during which land use approvals are valid and may be utilized.

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

COMPREHENSIVE PLAN

Chapter 1 Citizen Involvement & Chapter 2 Plan Review and Amendment Process

The proposed amendments to the Comprehensive Plan affect limited procedural aspects of public notice and the Comprehensive Plan amendment process. Though a broader evaluation of the City's public involvement policies may be timely and warranted, the proposed amendments are less ambitious. The focus of these amendments is to remove procedures and criteria from the Comprehensive Plan that are more appropriately located in the zoning code and to keep the broader policies that will continue to drive the City's land use and development review process in the Comprehensive Plan.

Only the numbered objectives of the Comprehensive Plan for which amendments are proposed are shown in the draft amendments. All other sections are proposed to remain as written.

Summary of Proposed Key Policy Changes:

Chapter 1, Objective #3

The proposed amendments to this objective make the Comprehensive Plan less specific about the exact means of how communication with the public occurs, while maintaining the overall quality and openness of the communication. The proposed amendments to the zoning code (Subsection 19.1007.3.B) enforce the public involvement principles of this objective by requiring that there be opportunity for public input and involvement in the amendment process.

Chapter 2, Objective #1

The proposed amendments to this objective remove the specific evaluation criteria and procedural steps involved with amending the Comprehensive Plan from the plan itself. These items are proposed for relocation to the zoning code.

The specific approval criteria for amendments are proposed for relocation to Section 19.902, Amendments to Maps and Ordinances. The procedural portions of the amendment process are proposed for relocation to Chapter 19.1000, Review Procedures and Administration.

Land Use and Development Review Tune-Up Overview of Proposed Amendments by Topic

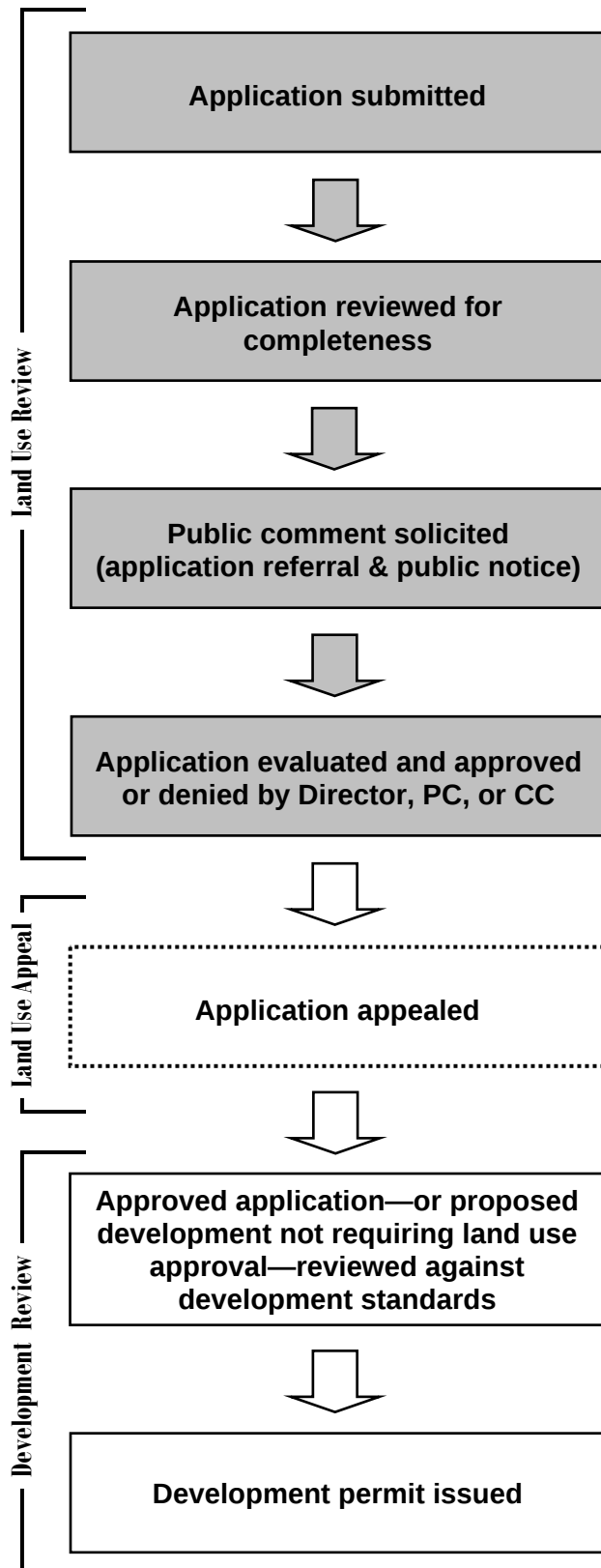
- Nonconforming Uses and Development (existing Chapter 19.800)
 - Maintains a property owner's rights to keep and maintain a legal nonconforming use or legal nonconforming structure.
 - Changes the process whereby alterations to nonconforming structures are approved. Alteration proposals would be routed through the variance process, rather than the current process that is specific to nonconforming structures.
 - Establishes an amortization process that can be enacted to gradually phase out certain nonconforming uses that have a high impact to their surroundings. The process would allow owners of a nonconforming use to achieve a reasonable return on their investment.
- Amendments to Maps and Ordinances (existing Chapter 19.900)
 - Replaces the City's existing chapter governing map and ordinance amendments in its entirety, but remains very similar to the chapter it is replacing.
 - Clarifies that the new chapter applies to the zoning map, land use regulations, and the Comprehensive Plan.
 - Allows for some zone map amendments to be heard and decided by the Planning Commission.
- Code Interpretations and Director Determinations (existing sections in Chapters 19.800 & 19.1000)
 - Combines current code provisions for both director's interpretations of code provisions and director's determinations of the status of structures, uses, and lots with regard to their legality.
 - Establishes new procedures and approval criteria for these requests.
- Conditional Uses (existing Chapter 19.600)
 - Maintains the basic process for establishing a conditional use and does not change the list of uses that are conditionally allowed in each zone.
 - Creates a process for reviewing modifications to existing conditional uses.
 - Clarifies the procedures and criteria for evaluating and addressing complaints about conditional uses.
 - Removes conditional use status from conditional uses that have been abandoned or discontinued.
- Development Review (NEW application)
 - Creates a new Development Review application that formalizes the City's permit review practices and allows for public notice where appropriate.
 - Does not create any new development standards or approval criteria, but instead references existing standards and criteria.
 - Does not add additional process, expense, or time to the permit approval process any more than is necessary to adequately implement the City's land use and development

standards. For the majority of permits reviewed by the City, the applicant would not experience any change in the way the City issues permits.

- Extensions to Expiring Approvals (NEW application)
 - Creates a formal process for extending approvals that would otherwise expire as long as the conditions in effect at the time of the original approval are still substantially the same.
- Modifications to Existing Approvals (NEW application)
 - Creates a formal process for reviewing changes to a development project that occur after land use approval is granted and prior to development permits being approved.
 - Codifies the current practice of reviewing small modifications administratively and sending major modifications back to the Planning Commission for review.
- Variances (existing Chapter 19.700)
 - Overhauls the existing Type II variance process. The existing code allows any standard to be varied by 10%. The proposed code allows a pre-defined amount of flexibility to a very specific list of development standards.
 - Removes a special type of administrative variance only available for additions to existing homes. Allows for the same types of request through the revamped variance process.
 - Revises Type III variance approval criteria, allowing more discretion by the Planning Commission to grant variances that result in better projects.
- Review Procedures (existing Chapter 19.1000)
 - Replaces the City's existing Administrative Provisions chapter (Chapter 19.1000) in its entirety, and revises all of the City's review and public notice procedures to be consistent with state statutes.
 - Clearly describes all steps required for application submittal and review, reducing confusion for applicants and staff.
 - Decreases the time required to issue an administrative decision requiring public notice (Type II review). Removes the option for a Type II decision to be called up for a Planning Commission hearing without filing an appeal.
 - Establishes the Planning Commission, and not City Council, as the final City appeal authority on appeals of administrative decisions.
- Comprehensive Plan (Chapters 1 & 2)
 - Removes procedures and criteria from the Comprehensive Plan that are more appropriately located in the zoning code and keeps the broader policies that govern the City's land use and development review process in the Comprehensive Plan.

Land Use and Development Review Tune-Up Project Overview

Existing Review Process



The proposed regulations would change and improve the existing review process in the following ways:

- Lists all land use applications in one place
- Changes, adds, and deletes some types of land use applications to streamline and fill gaps in the review process
- Consolidates three applications for efficiency and fairness
- Requires preapplication conference prior to submission
- Makes completeness review consistent with State law
- Provides process for modifying complete application
- Codifies existing NDA referral process
- Eliminates newspaper notice as a *requirement*
- Streamlines Type II notice process
- Requires more and better site signage & Type IV notice
- Requires notice to PC & CC when code interpretation issued by Director
- Adds purpose statements to provide policy direction
- Improves approval criteria to allow for appropriate analysis and discretion consistent with level of review
- Imposes expiration date on all approved applications
- Allows some zone changes to be decided by PC
- Clarifies DLC, PC, and CC role in decision making process
- Limits CC appeals to de novo on the record review
- Does not allow for Type II elevation to PC but for on appeal
- Does not allow for Type I or II elevation to CC on appeal
- Adds new Development Review application to formalize existing practice and bridge the gap between the City's land use and development review functions
- Provides process whereby certain kinds of nonconforming uses may be discontinued by the City through amortization
- Provides for loss of conditional use status if use discontinued

THIS IS TO NOTIFY YOU THAT THE CITY IS CONSIDERING ADOPTION OF LAND USE REGULATIONS THAT MAY AFFECT THE PERMISSIBLE USES OF YOUR PROPERTY

(Land Use File ZA-10-02)



MILWAUKIE
Dogwood City of the West

No changes are being proposed to your property's zoning designation or to the uses allowed in your property's zone.

Why is the City sending this notice?

You are receiving this notice because you own property in the City. State law requires the City to inform you about proposed changes to land use regulations that may affect what you can do on your property. Every property owner in the City is receiving this notice.

How will the proposed regulations affect your property?

Most of the proposed regulations are procedural in nature and are expected to have very little, if any, affect if you continue to use your property in the same way that you are using it now.

If you are thinking about changing the uses or the buildings on your property, the proposed regulations may affect what you could do and/or the process that you would have to go through to get your project approved.

If you obtain land use approval for future changes to your property, the proposed regulations require utilization of the approval within a specified time frame. If the approval is not utilized or extended, it would expire.

City land use regulations are one of many factors that affect property value. Other factors include the economy, your treatment of the property, and the condition of neighboring properties. Since the proposed regulations are not changing your property's zoning designation or the uses allowed in your zone, they are not expected to affect your property's value.

Why is the City proposing to change its land use regulations?

The City is proposing to change its land use regulations, which are located in Title 19 of the Milwaukie Municipal Code, to modernize and improve the effectiveness of its land use and development review process. This process is a basic and important City function that is meant to provide fair and timely review of development proposals, allow for meaningful public involvement, and facilitate quality development. Please see the project overview flowchart in this notice for more detailed information about the types of procedural changes being proposed. The purpose of the proposed changes is to create a smart, flexible, and local zoning code.

How to comment on and learn more about the proposed regulations.

Project Info: The proposed regulations are the result of a year-long project to modernize and improve the effectiveness of the City's zoning code known as the *Land Use and Development Review Tune-Up Project*. More information about the project is available here: <http://www.cityofmilwaukie.org/planning/land-use-and-development-review-code-tune-project>.

The proposed regulations, all supporting documents, and all applicable City ordinances are available at the Planning Department or online at: <http://www.cityofmilwaukie.org/planning/land-use-and-development-review-code-tune-project>. Copies may be purchased at a reasonable cost from the Planning Department.

The proposed regulations amend the text of the City's Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code. The City has determined that adoption of these regulations may affect the permissible uses of your and other properties within the City, and may change the value of property within the City.

Public Hearing Info: On **Jan 25, 2011**, the Milwaukie Planning Commission will hold a public hearing regarding the adoption of the proposed regulations (Land Use File ZA-10-02). Staff's report on the proposed regulations will be available in advance of this hearing after 8:00 a.m. on Wednesday, **Jan 19**, at the Planning Department, Ledding Library (local information shelf), and City Hall (10722 SE Main St). If the Planning Commission recommends approval, the proposed regulations will be considered for adoption by the Milwaukie City Council at another public hearing.

You are invited to attend any or all of the hearings and/or submit comments in writing in advance of the hearings to the Planning Department. You may also submit written comments or present verbal testimony at any or all of the hearings.

Contact Info: Planning Department
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206
planning@ci.milwaukie.or.us
503-786-7630

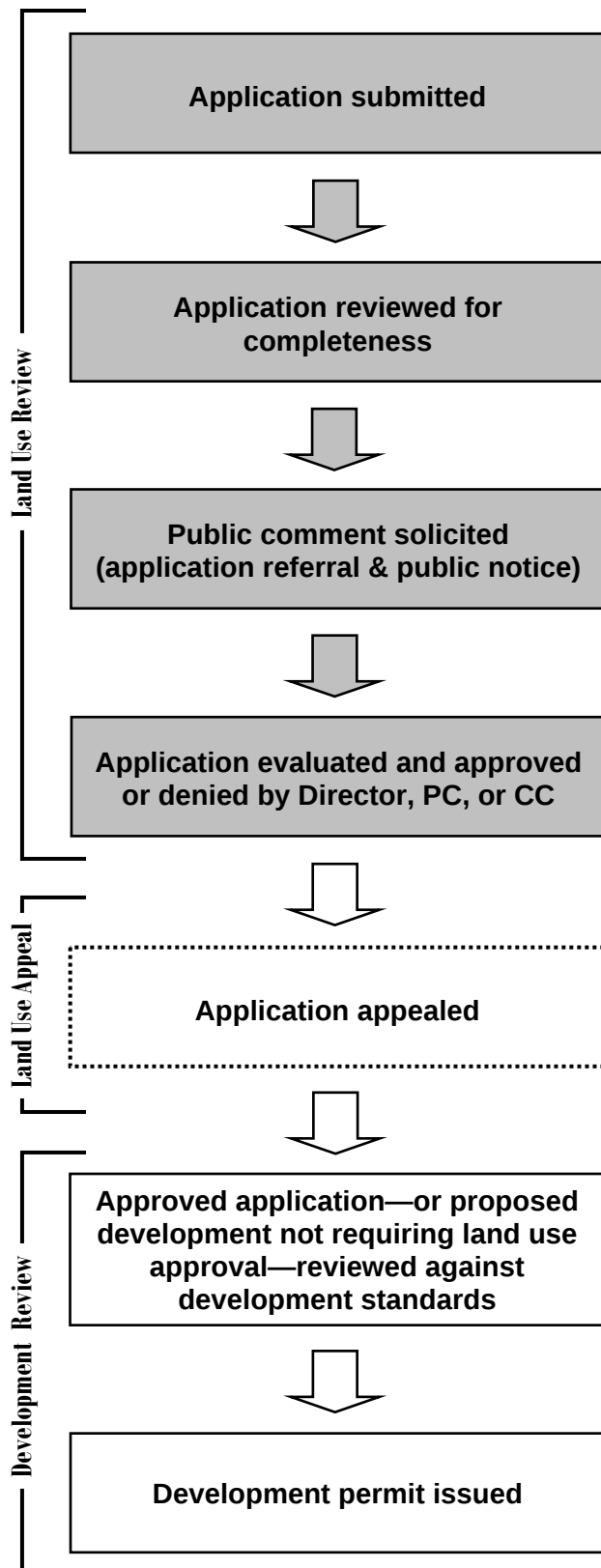
For assistance/service per the Americans with Disabilities Act (ADA), dial TDD (503) 786-7555.

Acronyms used on next page:

NDA: Neighborhood District Association
Director: Planning Director
PC: Planning Commission
CC: City Council
DLC: Design and Landmarks Committee

Land Use and Development Review Tune-Up Project Overview

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List of Proposed Changes to Proposed Amendments

Pending approval by the Planning Commission, this is a list of changes to be made to the January 2011 draft of the proposed amendments that were presented to the Planning Commission on January 25, 2011. Approved changes will be made prior to the hearing on these amendments before City Council.

1. Add a fifth review type to Chapter 19.1000 that mirrors the City's current major quasi-judicial review process, identify this review type as Type IV, rename the proposed Type IV review type as Type V (i.e. legislative applications), and update other code sections as needed.

The current proposal contains 4 review procedures for processing land use applications. The existing code currently has 5 review procedures. It was initially thought that eliminating the fifth review type, i.e. major quasi-judicial review, would streamline the City's review process. However, as staff has developed and further refined the proposed review procedures chapter (Chapter 19.1000), it has become clear that eliminating the major quasi-judicial review process has not simplified anything. It has merely resulted in the shifting of the review procedures specific to major quasi-judicial review into the legislative review process, which has created a bifurcated and overly-complex legislative review process. Staff proposes to revert to the City's existing approach of having five separate and distinct review types. This would result in no new or different procedures than those currently represented in the proposed amendments. It would simply create a separate section for them.

2. Modify Section 19.902 to allow Comprehensive Plan map amendments to be evaluated through either the major quasi-judicial review process or the legislative review process depending upon the geographic scope of the map amendments.

The current proposal provides for legislative review of all Comprehensive Plan map amendments (Section 19.902). The existing code provides for major quasi-judicial review of all Comprehensive Plan map amendments. Staff now believes that it would be more appropriate, and also more consistent with the proposed approach to zoning map amendments, to have the level of review dependent upon the geographic scope of the map amendment.