

ORDINANCE NO. 1857

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE NUMBER 1712, THE ZONING ORDINANCE, BY ADOPTING CERTAIN TEXT AMEDNMENTS RELATED TO METRO URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN TITLE 4 COMPLIANCE.

**Milwaukie Community Development Application ZA-98-02-C
Option 1**

WHEREAS, the Metro Growth Management Functional Plan requires that cities and counties in the Metropolitan Service District demonstrate timely compliance with its provisions; and

WHEREAS, on August 19, 1998, after an extensive public involvement process, the Milwaukie City Council adopted the Milwaukie Functional Plan Compliance Report that enumerates recommended changes to the City's Comprehensive Plan, Zoning Ordinance and Subdivision Ordinance; and

WHEREAS, the Functional Plan Compliance Steering Committee, consisting of three Planning Commission members and three Neighborhood Land Use Committee Chairpersons, was formed to assist the development of proposed code changes to implement the recommendations of the Functional Plan Compliance Report; and

WHEREAS, all required referrals and notices of public hearings on the proposed amendments have been made; and

WHEREAS, the proposed amendments were subject to an extensive public involvement process, including: a notice of public hearings to be held on January 26, 1999 and February 16, 1999 that was mailed to all property owners in the City and a public open house held on January 13, 1999; and

WHEREAS, the Milwaukie Planning Commission held public hearings on January 26, 1999 and February 9, 1999; and

WHEREAS on February 9, 1999 the Milwaukie Planning Commission adopted a motion recommending the City Council approve the proposed amendments to the Milwaukie Zoning Ordinance; and

WHEREAS, the Milwaukie City Council held work sessions on February 1, 1999 and March 15, 1999; and

WHEREAS, the Milwaukie City Council held a public hearing on February 16, 1999 and April 6, 1999; and

WHEREAS, City Council wishes to preserve industrial and manufacturing lands and uses and discourage conversion to large-scale retail, located in “Employment” or “Industrial” areas shown on the Milwaukie Comprehensive Plan Title 4 Lands Map; and

WHEREAS, the City Council desires to reduce the potential negative economic impacts to existing businesses made nonconforming by this ordinance by instituting special provisions for such uses.

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

Section 1. Findings. Findings of fact in support of these amendments contained in application ZA-98-02 are as follows:

1. The zoning text amendments have been made in conformance with the provisions of Zoning Ordinance Section 1011.5-Legislative Actions.
2. All applications for zoning ordinance text amendments are subject to Milwaukie Zoning Ordinance Section 904-Requirements for Zoning Text Amendments as follows.
 - a. **Applicable administrative requirements of Zoning Ordinance Section 1003.**

The administrative requirements concerning submission of applications for zoning and subdivision text amendments have been met.
 - b. **Reasons for requesting the proposed text amendments.**

Text amendments have been proposed in order to implement recommendations for code revisions necessary to demonstrate compliance with the Metro Growth Management Functional Plan Title 4 provisions.
 - c. **Explanation of how the proposed text amendments are consistent with other provisions of the Zoning Ordinance.**

The amendments are consistent with current provisions of the Zoning Ordinance. No known inconsistencies exist between the proposed amendments and existing regulations.
3. All applications for zoning ordinance text amendments are subject to Milwaukie Zoning Ordinance Section 905-Approval Criteria for All Amendments as follows:
 - a. **Conformance with applicable Comprehensive Plan goals, policies, and objectives.**

The amendments are consistent with the Comprehensive Plan and preserve the intent, goals, and policies of the Comprehensive Plan. There are no departures from stated goals and policies.
 - b. **Consistency of proposed development with the intent of the underlying zone.**

The amendments do not result in any development or change of zoning. The above criterion does not apply.

c. The amendments meet or can reasonably meet applicable regional, state or federal regulations.

The purpose of the amendments is to meet Metro regional policy. There are no applicable federal policies. The amendments are consistent with Oregon Statewide Planning Goals.

d. The proposed amendments demonstrate existing or planned public facilities and are sufficient to accommodate anticipated development.


The amendments do not change existing development potential. This criterion does not apply.

Section 2. The Milwaukie Zoning Ordinance is amended as described in Exhibit 1.

Read the first time on April 6 1999 and moved to a second reading by 5 - 0 vote of the City Council.

Read the second time and adopted by the City Council on April 6 1999

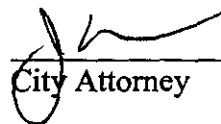
Signed by the Mayor on April 6, 1999


Carolyn Torrei, Mayor

ATTEST

Pat Duval, City Recorder

APPROVED AS TO FORM
RAMIS CREW CORRIGAN &
BACCRACH, LLP



City Attorney

EXHIBIT 1
Amendments to the Zoning Ordinance (Ord. 1712)
Community Development Application ZA-98-02-C
Option 1

Strikeout text = text to be deleted.

Underline text = text to be added.

TITLE 4 AMENDMENTS

Section 314 – Manufacturing Zone M

New Section:

314.2 Preexisting uses and developments

Notwithstanding the provisions of Section 800, Nonconforming Uses, prohibited uses and structures located in any mapped "Employment" or "Industrial" area, as shown on the Milwaukee Comprehensive Plan Title 4 Lands Map, that were lawfully in existence prior to May 6, 1999, and would be impacted by amendments prohibiting retail uses in excess of 60,000 square feet, are considered to be approved uses and structures for the purposes of this Section. If such a preexisting use or development is damaged or destroyed by fire, earthquake, or other natural force, then the use will retain its preexisting status under this provision, so long as it is substantially reestablished within 3 years of the date of the loss.

(PLEASE NOTE: Original subsections 314.2-314.5, and references to the same, become renumbered to 314.3-314.6.)

New subsection 314.3.C- Prohibited Uses

C. Retail uses greater than 60,000 square feet gross floor area per building or business are prohibited on all lots included in mapped "Employment" or "Industrial" areas as shown on Milwaukee Comprehensive Plan Title 4 Lands Map, April 6, 1999.

BOGLE & GATES P.L.L.C.

A Professional Limited Liability Company

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March 15, 1999

Via Facsimile 503-774-8236

The Hon. Carolyn Tomei
Milwaukie City Council
c/o John Gessner, Associate Planner
Milwaukie Community Development
6101 SE Johnson Creek Boulevard
Milwaukie, OR 97206

Re: Functional Plan/Compliance Amendments

Dear Madam Mayor and Council Members:

This letter reiterates the major points which I presented to you in my oral testimony on behalf of the Mill End Store at the time of your public hearing on February 16, 1999. In addition, this letter also responds to the issues raised in John Gessner's Memorandum (the "Memo") to you of March 3, 1999.

Regarding the extent of Title 4 amendments prohibiting "big box" retail, consider the following:

- Make revisions applicable to only mapped Title 4 areas, as shown on Metro's Functional Plan Title 4 Map (e.g., Recommendation 2.D.a. of the Memo). This request would clearly eliminate the Mill End Store property from the "big box" retail prohibition. As indicated in my February 16th testimony, if the City has policy reasons for restricting the size of retail uses in areas of the City beyond those shown on Metro's Title 4 Map, the City should do so by separate legislative action. Including lands beyond those shown on Metro's Title 4 Map within the context of a Title 4 implementing ordinance arguably creates a presumption of regional importance on those additional lands. Extending that logic, further argument could be made that subsequent plan amendments and zone changes in those additional areas would be subject to Metro's Compliance Procedures, thereby subjecting large portions of the City of Milwaukie to some form of additional regional jurisdiction and control.
- Exempt lawful uses existing prior to the adoption of the regulations (e.g., Recommendation 2. D.b. of the Memo).¹ If the Council elects to follow staff's Recommendation 2.D.b., we would request the

¹ As stated in my February 16, 1999 testimony, the determination of the Mill End Store's permitted use status should not be made a factual issue during the City Council's legislative proceedings on Functional Plan Compliance

The Hon. Carolyn Tomei
c/o John Gessner, Associate Planner
February 9, 1999
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opportunity to work with staff to craft acceptable language. In the interim, consider adopting the following language:

"Pre-Existing Uses and Developments: Notwithstanding the provisions of Section 800 (Non-Conforming Uses) of this Code, uses prohibited and structures that would non-conforming in any of the areas impacted by Title 4 amendments prohibiting "big box" retail that were lawfully in existence at the time of the adoption of the prohibitions are considered to be approved uses and structures. If such a pre-existing use or development is destroyed by fire, earthquake or other act of God, then the use will retain its pre-existing status under this provision so long as it is substantially re-established within three (3) years of the date of the loss."

Thank you for your considered attention to these important issues.

Very truly yours,

BOGLE & GATES P.L.L.C.



Mark D. Whitlow

MDW:ltu

cc: City Council Members
Howard Dietrich, Mill End Store

amendments. The Mill End Store submits that it is a permitted use within the parameters of Section 314.1 of City's Zoning Ordinance (i.e., any combination of manufacturing, office and/or commercial uses are allowed when at least 25% of the total project involves an industrial use as described under Subsection 314.1.B, where such uses involve the collection and assembly of durable goods, warehousing of goods, transshipment of goods from other sources and/or the assembly of goods from products which have been processed elsewhere, etc.).

BOGLE & GATES P.L.L.C.
