

ORDINANCE NUMBER 1737

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING
ORDINANCE NUMBER 1712, THE ZONING ORDINANCE (ZA-93-01)**

WHEREAS, on January 18, 1993 the Historic Review Committee unanimously approved a motion to amend Section 323.4(A) of the Milwaukie Zoning Ordinance to reduce the Planning Commission representation on the Committee from two members to one, to amend Section 323.9(B) to permit bed and breakfast facilities in historic structures when said structures are not located on major or minor arterial streets, and to amend applicable subsections of Section 323 changing the name of the historic review body from "Committee" to "Commission"; and

WHEREAS, the proposed amendments are consistent with Objective #2 of the Historic Resources Element of the Milwaukie Comprehensive Plan; and

WHEREAS, the proposed amendments are consistent with Objective #2 , Policy 4 of the Economic Base and Industrial/Commercial Land Use Element of the Milwaukie Comprehensive Plan; and

WHEREAS, public hearings were held for this matter by the Planning Commission on April 13, 1993, and by the City Council on May 18, 1993.

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

Section 1. Findings. The following findings as set forth in Section 905.1 of the Milwaukie Zoning Ordinance are hereby adopted:

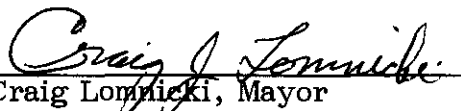
1. The proposed Zoning Ordinance amendments conform to applicable Comprehensive Plan goals, policies, and objectives by promoting and coordinating preservation activities of the Historic Resource Element; and conform to the Employment Opportunity Objective of the Economic Base and Industrial/Commercial Land Use Element by supporting home occupations which do not detract from the residential character of the area.
2. The anticipated development of bed and breakfast facilities would meet the intent of the zone in which it is located because the development would be subject to the Conditional Use criteria of Section 600 of the Milwaukie Zoning Ordinance.
3. The proposed amendments meet state regulations because a Notice of Proposed Action has been filed with the Department of Land Development and Conservation per OAR 660-18-020.
4. The proposed amendments will have no effect on provisions of public services or facilities.

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Section 2. Zoning Ordinance Text Amendment. Section 323 et. seq. is hereby amended as attached in Exhibit A.

Read the first time on May 18, 1993, and moved to second reading by a unanimous vote of the City Council.

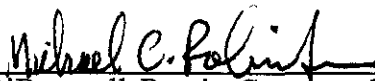
Read the second time and adopted by the City Council on May 18, 1993.


Craig Lomnicki, Mayor

ATTEST:


Pat Duval, City Recorder

Approved as to form:


O'Donnell Ramis Crew and Corrigan
City Attorney

SECTION 323 - HISTORIC PRESERVATION OVERLAY ZONE HP

323 HISTORIC PRESERVATION OVERLAY ZONE HP

In an HP Zone the following regulations shall apply:

323.1 Purpose

The intent and purpose of this Section is to promote the general welfare by providing for the identification, protection, enhancement, perpetuation, and use of sites, structures, districts, objects, and buildings within the City that reflect the City's unique architectural, archaeological, and historical heritage and to facilitate preservation of such properties in order to:

- A. Safeguard the City's heritage as embodied and reflected in such resources;
- B. Encourage public knowledge, understanding, and appreciation of the City's history and culture;
- C. Foster community and neighborhood pride and sense of identity based on recognition and use of cultural resources;
- D. Promote the enjoyment and use of cultural resources appropriate for the education and recreation of the people of the City;
- E. Preserve diverse and significant architectural styles reflecting phases of the City's history, and encourage complementary design and construction relative to cultural resources;
- F. Enhance property value and increase economic and financial benefits to the City and its residents;
- G. Identify and resolve conflicts between the preservation of cultural resources and alternative land uses;
- H. Integrate the management of cultural resources and relevant data into public and private land management and development processes; and
- I. Implement the goals and policies of the Comprehensive Plan.

323.2 Applicability

- A. Section 323 shall apply to all historic resources within the City as identified in the Historic Resources Element of the Comprehensive Plan.
- B. An historic resource may be designated HP on the Zoning Map and placed on the City Historic and Cultural Resources Inventory following the procedures of subsection 323.5 below.

323.3 Definitions

- A. Alteration, landmark: Means a change, addition, or modification of a landmark which affects the exterior of the landmark, excluding routine maintenance as defined in subsection 323.6 of this Ordinance.
- B. Commission: Means the City of Milwaukie Historic Review Commission.

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- C. Contributing: Is an historic resource ranking whereby buildings, sites, structures, or objects are less significant examples of architecture or of lesser historical association. These, over time, may become a source for additional "Significant" resources. To be designated as "Contributing," an historic resource must receive a rating score level of 50% to 60% on the evaluation worksheet or score a high of 10 in at least one of the categories of the evaluation worksheet.
- D. Demolish: Means to raze, destroy, dismantle, deface, or in any other manner cause partial or total destruction of a designated resource or building in an historic district.
- E. Evaluation worksheet: Is a rating system used by the City to rank historic resources as to their historic, architectural, or environmental characteristics. The ranking system is numerical with a top score of 86 and is part of the Historic and Cultural Resources Inventory, located in the background paper.
- F. Historic or cultural resource or resource: Means any site, object, building, ensemble, district, or structure which is included in the Historic and Cultural Resources Inventory.
- G. Historic and Cultural Resources Inventory or Inventory: Means the 1988 Milwaukie Historic and Cultural Resources Inventory included as part of the Historic Resources Background Paper of the Comprehensive Plan.
- H. Landmark: Means a cultural resource that has been designated by the Milwaukie City Council as per subsection 323.4 of this Ordinance.
- I. Significant: Is an historic resource ranking whereby important buildings, sites, structures, or objects in Milwaukie are distinguished by outstanding qualities of architecture, relationship to environment, and/or historic associations. To be designated as "Significant," an historic resource must receive a rating score level of 60% or greater on the evaluation worksheet and be at least 50 years old, or score a high of 10 in at least two of the categories of the evaluation worksheet, or be listed on the National Register of Historic Places.
- J. Unrankable: Historic resources lack sufficient information to be ranked. When that information is available, those found to be "Significant" or "Contributing" shall be recommended by the Historic Review Commission for designation as "Landmarks."

323.4

Historic Review Commission

- A. Appointment and composition: One member of the Planning Commission and four individuals to be appointed by the City Council shall comprise the Historic Review Commission. Two of the appointed individuals shall have demonstrated special interest, experience, and/or knowledge in the field of historic preservation, architecture, history, or related disciplines. The third and fourth individuals appointed shall be citizens-at-large. The four individuals shall be appointed for a term of three years and may be reappointed to, or removed from, the Commission at the discretion of the City Council.

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B. Duties and responsibilities: The Commission shall be responsible for the following:

1. Carry out the duties described for it in this Section and otherwise assist the City Council on historic preservation matters.
2. Review and make recommendations on all partitions and subdivisions of designated properties.
3. Disseminate information to educate the public as to State and federal laws protecting antiquities and historic places.
4. Act as a coordinator for local preservation groups such as the Milwaukie Historical Society, educational workshops, signing and monumentation projects, and other similar programs.
5. Assist the Milwaukie Historical Society in advising interest groups, agencies, boards, commissions, and citizens on matters relating to historic preservation within the City.
6. 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 subsection 323.5.
7. Review and make recommendation on all applications requesting designation or deletion of an historic district as provided under subsection 323.5.
8. Review all development which proposes to alter a landmark, subject to the procedures and criteria set forth in this section.
9. Review all demolition permits affecting landmarks, as provided under subsection 323.8.
10. Review and make recommendation on all conditional use applications related to landmarks.
11. Maintain an Historic and Cultural Resources Inventory and map of landmarks.
12. Develop regulations for the protection of landmarks, such as design guidelines for adoption by the City Council.

323.5 **Process for designation or deletion of a landmark**

- A. Application request: The owner of record, contract purchase, or an agent of any of the foregoing, of property within the City of Milwaukie may make application for resource designation or deletion. The application shall be in such form and detail as the Community Development Director prescribes and will be the same as the Major Quasi-Judicial review process of subsection 1011.4 of this Ordinance, substituting the Historic Review Commission for the Planning Commission. The application shall be submitted to the Community Development Director. The Historic Review Commission or the City Council may also initiate such proceedings on their own motion.

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- B. Historic Review Commission: The Commission, as described in subsection 323.4, shall conduct a public hearing to evaluate the request. The Commission shall enter findings and make a written recommendation to the City Council.

For designation, the Commission shall determine that the resource meets the ranking standards for resource designations (as defined in subsection 323.3) based on completion of the evaluation worksheet.

For deletion, the Commission shall determine that the resource does not meet the ranking standards for resource designations.

The Commission shall also determine whether the designation meets the goals and policies of the Comprehensive Plan.

- C. City Council: The City Council shall conduct a public hearing to consider the recommendation of the Historic Review Commission on the request and shall either approve, approve with conditions, or deny the request.
- D. Pending permits: No new construction, exterior alteration, demolition, or removal permits for any improvement, building, or structure relative to a proposed landmark shall be issued while any public hearing or any appeal affecting the proposed action is pending.
- E. Interim measures: Upon a request for new construction, exterior alteration or demolition of a resource which is on the inventory but designated as "Unrankable" for lack of information regarding location, quality, or quantity, the applicant shall be required to first complete the designation process for the resource as outlined in subsection 323.5.

323.6 Alteration and development

- A. Review required: Any exterior alteration of a landmark shall be subject to review under the provision of subsection 323.6 herein. This review applies only to those resources determined to be "Significant" on the inventory. Resources designated "Unrankable" must complete the process referred to in subsection 323.5.
- B. Application Request: The application shall be submitted to the Community Development Director. The application shall be in such form and detail as the Community Development Director prescribes. Applications subject to subsection 323.6.C shall follow the Type I Administrative review process of subsection 1011.1.
- C. Administrative approval:
1. The Community Development Director shall approve alteration requests if:
 - a. There is no change in the appearance and materials of the existing landmark; or
 - b. The proposed alteration duplicates the affected exterior building features as determined from an historic photograph, original building plans, or other evidence of original building features.

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2. The following minor alterations are exempt from review provided these actions meet the above standards.
 - a. Replacement of gutters and downspouts, or the addition of gutters and downspouts, using materials that match the appearance of those that were typically used on similar style buildings;
 - b. Repairing, or providing a compatible new foundation that does not result in raising or lowering the building elevation;
 - c. Replacement of building material, when required due to deterioration of material, with building material that matches the appearance of the original material;
 - d. Repair and/or replacement of roof materials with the same kind of roof materials existing, or with materials which are in character with those of the original roof;
 - e. Application of storm windows made with wood, bronze, or flat finished anodized aluminum, or baked enamel frames which complement or match the color detail and proportions of the building;
 - f. Replacement of wood sashes with new woods sashes, or the addition of wood sashes when such is consistent with the original historic appearance;
 - g. Installation of solar equipment so that it complies with subsection 323.6.C.2.e; and
 - h. The installation of security doors and security lighting systems.
- D. Other requests: All requests that do not meet the provisions of subsection 323.6.C shall be forwarded to the Commission. The Commission's decision will be final after notice and public hearing held the same as subsection 1011.3 of this Ordinance (Minor Quasi-Judicial review), substituting the Historic Review Commission for the Planning Commission. The Commission shall approve or disapprove issuance of the permit. The Commission may attach conditions to the approval for permit which must be adhered to for the permit to remain valid.
- E. Criteria and findings: Approval of a permit to alter a landmark or any property in the HP district shall be based on findings of adherence to the following guidelines:
 1. Retention of original construction: Distinguishing original qualities defining a resource's character shall not be destroyed. Removal or alteration of historic materials or distinctive architectural features should be avoided when possible.

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2. Building Height: Existing building heights should be maintained. Alteration of roof pitches shall be avoided. Raising or lowering a building's permanent elevation when constructing a foundation shall be avoided, except as required by Building Code or floodplain development permit.
3. Horizontal additions: The scale and proportion of building additions, including the relationship of windows to walls, shall be visually compatible with the traditional architectural character of the historic building. Contemporary design for alterations and additions is acceptable if the design respects the building's original design and is compatible with the original scale, materials, and window and door opening proportions of the building.
4. Windows: Window replacements shall match the visual qualities of original windows as closely as possible. Wood window frames are preferred in meeting this standard. However, if nonwood replacements exhibit similar visual qualities as their wooden counterparts, they may be acceptable. The original number of window panes shall be maintained or restored when replacements are required.
5. Restoration possible: Except where Building Code precludes it, new additions or alteration to buildings shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the original building could be restored.
6. Signs and lighting: Signs, lighting, and other appurtenances, such as walls, fences, awnings, and landscaping, shall be visually compatible with the original character of the building.
7. Time period consistency: Buildings shall be recognized as products of their own time. Alterations that have no historical basis or which seek to create an earlier appearance shall be avoided.
8. Visual integrity/style: Distinctive stylistic features, such as a line of columns, piers, spandrels, or other primary structural elements, or examples of skilled craftsmanship which characterize a building, shall be maintained or restored as far as is practicable.
9. Replacement or additional materials: Whenever possible, deteriorated architectural features shall be repaired rather than replaced. In the event replacement of an existing feature is necessary, or an addition is proposed, new materials should match those of the original building, to the extent possible, in composition, design, color texture, and other visual qualities.
10. Buffering: An appropriate buffer or screen, as provided under Section 413, may be required when a new commercial or industrial improvement or use is proposed on or adjacent to a designated resource, or within or adjacent to an historic district.

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- F. Appeals: Appeals shall be heard by the City Council as per Section 1002 of this Ordinance.

323.7 Maintenance and repair

- A. Nothing in this Ordinance shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature which does not involve a change in design, material, or appearance of such feature or which the Building Official shall certify is required for public safety due to an unsafe or dangerous condition.

323.8 Demolition

- A. Notification of demolition request: If an application is made for a building permit to demolish all or part of a designated cultural resource, to the extent that the historic designation is affected, the Building Official shall, within seven days of the receipt of an application, transmit a copy of the application to the Commission. This review applies to all resources determined to be "Significant" or "Contributing" on the inventory. Resources determined to be "Unrankable" shall first complete the process referred to in subsection 323.5.
- B. Property owner action: For a period of not less than 30 days prior to the public hearing the property owner shall:
1. List the property for sale with a real estate agent for a period not less than 90 days with the intent of selling or relocating the resource intact. Such real estate agent shall advertise the property in local and state newspapers of general circulation in the area. This listing requirement can be reduced if the Commission approves the demolition request.
 2. The owner shall give public notice by posting a visible "For Sale" sign on the property which shall be in bold letters no less than 6" in height and shall read as a minimum: HISTORIC BUILDING FOR SALE - WILL BE DEMOLISHED UNLESS MOVED.
 3. Prepare and make available any information related to the history and sales of the property to all individuals, organizations, and agencies who inquire.
- C. Public hearing review: The Commission shall hold a public hearing within forty-five days of application. The procedures shall be the same as those in subsection 1011.3, Minor Quasi-Judicial review, substituting the Historic Review Commission for the Planning Commission.
- D. Review criteria and findings: In determining the appropriateness of the demolition, as proposed in an application for a building permit, the Commission shall consider the following:
1. All plans, drawings, and photographs as may be submitted by the applicant:
 2. Information presented at a public hearing held concerning the proposed work;

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3. The City of Milwaukie Comprehensive Plan, including the economic, social, environmental, and energy consequences;
 4. The purpose as set forth in subsection 323.1;
 5. The criteria used, and findings and decisions made, in the original designation of the landmark or historic district in which the property under consideration is located;
 6. The historical and architectural style, design, arrangement, materials, or its appurtenant fixtures; the relationship of such features to similar features of other buildings within the district and the position of the building or structure in relation to public rights-of-way and to other buildings and structures in the area;
 7. The effects of the proposed work upon the protection, enhancement, perpetuation, and use of the district which cause it to possess a special character or special historic or aesthetic interest or value; and
 8. Whether denial of the permit would involve substantial hardship to the applicant, and whether issuance of the permit would act to the substantial detriment of the public welfare and would be contrary to the intent and purposes of this Ordinance.
- E. Approval of demolition request/appeals: The Commission may approve the demolition request after considering the criteria under subsection 323.8.D, above. Action by the Commission approving the issuance of permit for demolition may be appealed to the City Council by any aggrieved party, by filing a notice of appeal, in the same manner as provided in subsection 323.6.F. If no appeal is filed, the Building Official shall issue the permit in compliance with all other codes and ordinances of the City.
- F. Denial/stay of demolition:
1. The Commission may reject the application for permit if it determines that in the interest of preserving historic values, the property should not be demolished. In that event, issuance of the permit shall be suspended for a period not exceeding thirty days from the date of public hearing. The Commission may invoke an extension of the suspension period if it determines that there is a program or project under way which could result in public or private acquisition of the landmark, and that there is reasonable ground to believe that such program or project may be successful. Then the Commission, at its discretion, may extend the suspension period to thirty days, to a total of not more than one hundred twenty days from the date of public hearing for demolition permit.
 2. If all such programs or projects are demonstrated to the Commission to be unsuccessful and the applicant has not withdrawn his application for demolition permit, the Building Official shall issue such permit, if the application otherwise complies with the codes and ordinances of the City.

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3. Action by the Commission suspending issuance of the permit for demolition may be appealed to the City Council by the applicant for the permit, by filling a notice of appeal in the same manner as provided in subsection 323.6.F.

323.9 Uses permitted

- A. Primary uses: A resource may be used for any use which is allowed in the underlying district, subject to the specific requirements for the use, and all other requirements of this Section.
- B. Conditional uses: Except within low and moderate density residential designations, uses identified in subsection 323.9.C below which would not be allowed in the underlying zones may be allowed when such use would preserve or improve a resource which would probably not be preserved or improved otherwise, subject to the provisions of subsection 323.6. Such uses may also be allowed in the low and moderate density residential designations if located along minor or major arterial streets, with the exception of bed and breakfast establishments, which may be located on any street. Approval of such uses shall include conditions mitigating adverse impact of the use on neighboring properties and other requirements as per Section 600 of the Zoning Ordinance (Conditional Uses).
- C. The following uses may be permitted after a public hearing conducted pursuant to subsection 1011.3 of the Zoning Ordinance:
 1. Art and music studios
 2. Galleries
 3. Offices/clinics
 4. Craft shops
 5. Bed and breakfast establishments
 6. Gift shops
 7. Museums
 8. Catering services
 9. Bookstores
 10. Boutiques
 11. Restaurants
 12. Antique shops
 13. Community centers for civic or cultural events
 14. Other uses determined by the Planning Commission to be similar to those listed above.