

ORDINANCE NUMBER 1667

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE NUMBER 1438, THE ZONING ORDINANCE; AND AMENDING THE ZONING ORDINANCE MAP.**

**WHEREAS**, the City has received a Periodic Review Notice from the State Department of Land Conservation and Development, and

**WHEREAS**, the Comprehensive Plan and Comprehensive Plan Map have been reviewed and found to be in need of amendment, and

**WHEREAS**, the Zoning Ordinance and Zoning Ordinance Map must be amended to reflect changes made to the Comprehensive Plan and Comprehensive Plan Map, based on the findings below,

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

Section 1. Findings. Findings of Fact in support of the proposed amendments are attached as Exhibit A, Periodic Review Order.

Section 2. Zoning Ordinance Map Amendment. The Zoning Ordinance Map of Ordinance 1438 is amended by changing the zoning designations of the following described properties as indicated (see Map Exhibit B):

- a. Change the zoning of the following from Manufacturing (M) to Residential R-2:

T1S, R1E, 36AA, W.M., Tax Lots 19200, 19201, and 19201; and T1S, R1E, 36AB, W.M., Tax Lots 3000, 3003, and 3004.

- b. Change the zoning of the following from Residential R-2 to Residential-Business Office-Commercial (R-1-B):

T1S, R1E, 36BC, W.M., Tax Lots 4800, 4801, 5100, 5200, 5400, 5500, and portions of 4200 and 5600; and T1S, R1E, 36BB, W.M., Tax Lots 4400 and 4500.

- c. Change the zoning of the following from Residential R-5 to Residential R-3:

T1S, R1E, 36CB, W.M., Tax Lots 3600, 4200, and 4300.

- d. Add the Historic Protection Overlay Zone (/HP) to those properties illustrated on Comprehensive Plan Map 4 (Historic Resources) and listed in Comprehensive Plan Appendix 1.

- e. Add the Natural Resource Overlay Zone (/NR) to those properties illustrated on Comprehensive Plan Map 5 (Natural Resources) and listed in Comprehensive Plan Appendix 2.

Section 3. Zoning Ordinance Text Amendments.

- a. Section 1.03 Definitions is supplemented by new definitions in proper order, as identified in Exhibit C.
- b. In Section 1.03 Definitions amend the definition for Day Care Center to read as follows:

"DAY CARE CENTER: Means any facility, institution, establishment, or place not a part of a school as defined in Section 1.02 and not meeting the definition of Family Day Care, that provides day care to children not of common parentage, including day nurseries, nursery schools, pre-schools, day care facilities, or similar units operating under any name for a period not exceeding twelve (12) hours per day for the purpose of being given board, care, or training apart from their parents or guardians for compensation or reward."

- c. In Section 1.03 Definitions replace the definition of Day Care Home with the following:

"FAMILY DAY CARE: Means a private residence occupied by the family day care provider in all areas zoned for residential or commercial purposes and used as a home occupation by the provider for the care of fewer than 13 children, including children of the provider, regardless of full-time or part-time care status."

- d. Insert a new subsection to be known as Section 3.19.5.j and reading as follows:

"j. Conformance to applicable Comprehensive Plan Policies."

- e. Renumber Section 3.20.2.C.3. as 3.20.2.C.4.

- f. Insert a new subsection to be known as Section 3.20.2.C. and reading as follows:

"3. The 40-Mile Loop."

- g. Add the following to Section 3.20.4.A.3:

"For solid waste facilities, this shall mean:

- a. Hours of Operation

If a solid waste facility is to be located within 500 feet of property planned, zoned, or used for residential purposes, no solid waste facility shall be in operation between the hours of 7:00 p.m. and 7:00 a.m.

"b. Traffic

No solid waste facility shall be approved except where all vehicular access to and from the solid waste facility site is via a City of Milwaukie designated arterial street or Oregon Department of Transportation highway. No solid waste facility shall be approved where the level of service at the nearest arterial intersection that would serve the facility is below a level of service "C" (higher than a volume/capacity ratio of .8), as defined by the Highway Capacity Manual, Special Report 209, Transportation Research Board, 1985. Further, no solid waste facility shall be approved where the design capacity of the adjacent roadway is exceeded by existing or future traffic.

c. Litter Control

The applicant shall provide to the City of Milwaukie at the time of application a plan for daily litter control. Said plan shall include identification of personnel, financing, available tools and facilities, methods to be used, and a method for public contact to notify operators of litter, noise, or other operational problems.

d. Noise

Noise levels shall comply with Chapter 8.08 (Noise Control) of the Milwaukie Municipal Code.

e. Storage

All materials shall be stored within an enclosed building except as follows: 1) where all materials are stored within an area enclosed by a solid, opaque wall or fence 8 feet or more in height and landscaped along all street frontages, and, 2) when located at least 250 feet from property planned, zoned, or used as residential, and, 3) where all materials are nonputrescible.

f. After-Hours Use

Any containers provided for after-hours donation of recyclable materials only, shall be located at least 250 feet from any property planned, zoned, or used for residential purposes.

g. Glare

Exterior light shall be in accordance with the latest recommendations of the Illumination Engineering Society. Glare from either direct or indirect sources shall not exceed 0.5 footcandles. Site lighting shall be hooded and directed downwards, onto the site.

"h. Materials Handled

No hazardous wastes, as defined and regulated by ORS 466.005, shall be disposed onsite."

- h. Insert a new section to be known as Section 3.21 Natural Resource Overlay Zone (/NR), and reading as identified in Exhibit D.
- i. Insert a new section to be known as Section 3.22 Historic Preservation Overlay Zone (/HP), and reading as identified in Exhibit E.
- j. Renumber Section 3.14 Business Industrial (BI) Zone as 3.23.
- k. Insert a new section to be known as Section 3.30 Mobile Home Parks, and reading as identified in Exhibit F.
- l. Section 5.01.1.e is amended to read as follows:

"e. Mobile Home Park                      Two spaces per mobile home, one of which must be covered. One (1) space - 10 feet by 25 feet for every 10 dwelling units for recreational vehicles, boats, etc."

- m. Section 10.02 is amended to read as follows:

"Section 10.02. Time Limit and Appeal from Ruling of Planning Commission. Final action or ruling on any request pursuant to this Ordinance, including resolution of all appeals under ORS 227.180, shall be given within 120 calendar days after an application is received and is deemed complete. This does not apply to an amendment to an acknowledged comprehensive plan or adoption of a new land use regulation. A waiver of the 120-day processing time limit may be granted upon submission of a written request for extension by all applicants. Any action or ruling of the Planning Commission pursuant to this Ordinance may be appealed to the City Council within 15 calendar days after the Planning Commission has rendered its decision. Written notice of the appeal shall be filed with the City Recorder. If the appeal is not filed within the 15-day period, the decision of the Planning Commission shall be final. If the appeal is filed, the City Council shall receive a report and recommendation on it from the Planning Commission, and shall hold a public hearing on the appeal within 40 calendar days of receiving a request for an appeal. An appeal of a Planning Commission decision shall specify, in detail, the issues or findings in contention so as to afford the City Council and interested parties an adequate opportunity to respond to and resolve each issue. Notice for the appeal hearing shall: be provided to the applicant and other persons as otherwise provided by law, include a description of applicable criteria, include a street address or other geographical reference, state the time, date, and location of the hearing, state that failure to raise an issue in person or by letter precludes appeal and that failure to specify to which criterion the comment is directed precludes appeal based on that criterion, and be mailed at least 10 calendar days before the hearing. At the commencement of the City

Council appeal hearing, a statement shall be made to those in attendance that: describes the applicable substantive criteria, testimony and evidence must be directed at the issues raised in the appeal, and failure to address a criterion precludes an appeal based on that criterion."

n. Section 10.04. Filing Fees. is renumbered to 10.06.

o. Insert a new Section 10.04 to read as follows:

"Section 10.04. Review of Application. The Community Development Director shall review the application for completeness. If an application is incomplete, the Community Development Director shall notify the applicant of exactly what information is missing, within 30 calendar days of receipt of the application, in order to allow the applicant the ability to submit the missing information. The application shall be deemed complete for purposes of commencing the 120-day processing time upon receipt of the missing information. If the applicant refuses to submit the missing information, the application shall also be deemed complete for purposes of commencing the 120-day processing time on the 31st day after the application was initially received. Applications requiring a public hearing shall not be scheduled until the application is deemed complete."

p. Section 10.05. Procedures. is renumbered to 10.11.

q. Insert a new Section 10.05 to read as follows:

"Section 10.05. Concurrent Reviews. Applications for more than one land use review on the same property, and all integral parts of the same development proposal, may be processed in a single hearing at the request of the applicant. Separate findings shall be required for each decision and one decision may be rendered contingent upon another decision. Concurrent reviews of applications are subject to the 120-day time limit."

r. Section 10.06. Recess of Hearing. is renumbered to 10.12.

s. Insert a new Section 10.06 to read as follows:

"Section 10.06. Filing Fees. A fee as established by resolution of the City Council, to aid in defraying the City's cost of processing applications, shall be paid to the City of Milwaukie upon the filing of an application. Such fees shall not be refundable. Fees for preparation of written transcripts shall not exceed the actual cost of the transcript up to \$500.00, plus one-half of the actual cost over \$500.00."

t. Section 10.07. Time Limit on a Permit for a Conditional Use or Variance. is renumbered to 10.13.

u. Insert new Sections 10.07, 10.08, 10.09, and 10.10 to read as follows:

"Section 10.07. Applicable Standards and Criteria. If the application was complete when first submitted, or the applicant submits the requested additional information within 180 calendar days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

Section 10.08. Ex Parte Contact. Prior to rendering a decision, no member of a review body shall communicate, directly or indirectly, with any person interested in the outcome or any representative in connection with any issue involved in an application except upon notice and opportunity for all parties to participate. Should such communications occur, the member of the review body shall:

1. Enter into the record the substance of any such written or oral communication; and
2. Publicly announce the content of the communication and provide an opportunity to rebut the substance of the contact.

"Section 10.09. Decisions. A decision may be made to grant, grant with conditions, modify, or deny an application as provided by the applicable approval criteria.

Section 10.10. Mandamus Authorized. If the City of Milwaukie does not take action on an application for a permit or zone change within the 120-day time period, an applicant may apply in the Circuit Court of Clackamas County for a writ of mandamus to compel the City to either make a decision or show that the approval would violate a substantive provision of the City's Comprehensive Plan or land use regulations."

v. Amend Section 10.11. Procedures. as follows:

Subsection (C)5:

"5. Decision. The Planning Commission shall conduct the public hearing and render a decision on the matter including findings, conclusions, and conditions, if necessary, based on compliance with the applicable Comprehensive Plan goals and policies and other applicable implementing ordinances. Community Development staff shall notify the applicant and property owner, if different, in writing, within five days and any person who testified either in person or in writing, at the hearing."

Amend Subsection (D)3 and renumber as (D)4:

- "4. Decision. The Planning Commission shall conduct the public hearing and may deny the application or recommend approval to the City Council based on compliance with the applicable Comprehensive Plan goals and policies and compliance with Section 9.03 of the Zoning Ordinance. A denial of the proposed amendment shall be final unless it is appealed to the City Council as provided under Section 10.02. Upon approval of the proposed amendment by the Planning Commission, the Commission shall, within 40 calendar days after the hearing, provide a report recommending approval to the City Council. This recommendation shall include findings of fact and conclusions. The City Council shall conduct a public hearing. Public notification of this hearing shall be given as per Subsection 2 above. Community Development staff shall notify the applicant and property owner, if different, and any individual who testified at the hearing, in writing, within five days after the final decision."

Add a new Subsection (D)3:

- "3. Notice for Deletion of Historic Preservation Overlay Zone. Notice for deletion of a Historic Preservation Overlay Zone shall follow the procedures of subsection 2. above. In addition, notice of a public hearing shall also be mailed to the Oregon Department of Land Conservation and Development (DLCD)."

Subsection (E)2:

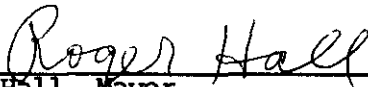
- "2. Decision. The Planning Commission shall conduct a public hearing and shall make a decision based on compliance with the applicable goals and policies of the Comprehensive Plan. The Planning Commission shall prepare a recommendation to the City Council. If the Commission denies the proposal, and it was the initiator of the proposal, the matter shall be terminated. If the proposal was initiated by the City Council and the Commission denies it, the proposal shall be forwarded to City Council with a report and recommendation of denial. If the proposal is approved by the Commission, a report and recommendation, including findings and conclusions, shall be forwarded to Council. The City Council shall conduct a public hearing. Public notification of this hearing shall be given as per Subsection 1 above."

ORDINANCE NUMBER 1667

Read the first time on November 7, 1989, and moved to second reading  
by unanimous vote of the City Council.

Read the second time and adopted by the City Council on  
November 7, 1989.

Signed by the Mayor on November 7, 1989.

  
\_\_\_\_\_  
Roger Hall, Mayor

ATTEST:

  
\_\_\_\_\_  
Jerri Widner, City Recorder

Approved as to form:

  
\_\_\_\_\_  
Tim Ramis, City Attorney

ORDINANCE NUMBER 1667 Exhibit C  
Additions to Section 1.03. Definitions.

**ALTERATION, LANDMARK:** Means a change, addition, or modification of a landmark which affects the exterior of the landmark, excluding routine maintenance as defined in Section 3.22.06 of this ordinance.

**COMMITTEE:** Means the City of Milwaukie Historic Review Committee.

**CONTRIBUTING:** Is an Historical 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.

**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.

**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 Cultural Resources Inventory, located in the background paper.

**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.

**HISTORIC AND CULTURAL RESOURCES INVENTORY or INVENTORY:** Means the 1988 Milwaukie historic and cultural resource inventory included as part of the Historic Resources Background Paper of the Comprehensive Plan.

**LANDMARK:** Means a cultural resource that has been designated by the Milwaukie City Council as per Section 3.22.04 of this ordinance.

**MOBILE HOME:** Means a residential trailer, mobile house, or manufactured home meeting ORS 446.003(17) and designed to be used as a year-round residential dwelling. The structure must also be at least 12 feet in width containing 700 or more square feet of living space designed for occupancy by one family. The unit is not equipped with a permanent hitch and does not have wheels or axles permanently attached to its body or frame.

**MOBILE HOME PARK:** Means a lot, tract, or parcel of land under one ownership, the primary purpose of which is to rent space for placement of a mobile home. A mobile home park shall contain a minimum of 2 acres, and a minimum of four mobile homes.

**RESIDENTIAL CARE FACILITY:** Means a facility that provides, for six or more physically handicapped or socially dependent individuals, residential care in one or more buildings or contiguous properties. Residential care facilities may be allowed in all areas subject to Community Service Overlay Review.

**RESIDENTIAL HOME:** Means a residence for five or fewer physically or mentally handicapped persons and for not more than two staff persons who need not be related to each other or to any other home resident. Residential Homes may be permitted as a home occupation in all areas zoned for residential or commercial purposes.

**SIGNIFICANT:** Is an Historical 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.

**UNRANKABLE:** Historical 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 Committee for designation as Landmarks.

SECTION 3.21 - NATURAL RESOURCE OVERLAY ZONE (/NR)

Section 3.21.01. Purpose. This section is intended to provide protection for natural resources or areas with natural resource values that have been identified by the City as providing benefits to the public. Such areas include sites meeting the standards of Statewide Planning Goal 5 for open space, scenic, or natural values.

The Natural Resource Overlay Zone provides protection for natural resource sites depending upon the characteristics of the resource.

This overlay zone is intended to allow development in situations where adverse impacts from the development can be avoided or mitigated. In addition, the regulations of this section are an important factor in the City's compliance with Statewide Planning Goal 5 and also serve to encourage coordination between City, State, and Federal agencies concerned with natural resource regulatory programs.

Section 3.21.02. Designations. The Natural Resource Overlay Zone will be attached to the primary zone for properties identified as requiring protection by the City's Natural Resource Inventory. The overlay zone will be applied on the Zoning Map to show natural resource areas described as follows:

- A. Riparian Areas - The /NR Overlay Zone will be assigned to identified natural resource sites fronting water bodies, including rivers, creeks, lakes, and ponds. The boundary of this overlay zone shall be the same as the 100-year floodplain as established by FEMA, except for that area fronting the Willamette River from Johnson Creek to the south end of the sewage treatment plant site, where the boundary shall be 25 ft. inland (measured horizontally) from the mean high water line as established by the Oregon Division of State Lands.
- B. Wetland Areas - The /NR Overlay Zone will be assigned to identified natural resource sites containing wetlands. The specific boundary of this overlay zone has not been identified by the Natural Resources Inventory and therefore shall generally follow identified tax lot boundaries until such time as specific onsite studies, normally as part of a development request, can more clearly delineate the wetland location.
- C. Habitat Areas - The /NR Overlay Zone will be assigned to non-riparian and non-wetland natural resource sites containing habitat values such as wooded areas, naturally vegetated areas, areas with rare or endangered flora and fauna, or similar areas, as identified by the Natural Resources Inventory. The specific boundary of this overlay zone has not been identified by the Natural Resources Inventory and therefore shall generally follow identified tax lot boundaries until such time as specific onsite studies, normally as part of a development request, can more clearly delineate the habitat location.

## SECTION 3.21 - NATURAL RESOURCE OVERLAY ZONE

Section 3.21.03. Primary Uses. The provisions of Section 3.21 do not prohibit uses allowed by the primary zone. However, the amount and placement of uses and development may be regulated in order to meet the purpose and provisions of this section.

Section 3.21.04. Applicability. Development review and approval is required prior to development for sites having a Natural Resource Overlay Zone that are proposed for the following development activities:

- A. New structural development;
- B. Fills, excavations, and modifications of drainage patterns, except as provided in Section 3.21.05.D;
- C. Site modifications, including new or changes to: parking and maneuvering areas, loading areas, exterior storage, landscaped areas, or identified resources;
- D. Exterior expansion of any building or activity;
- E. New above or below ground utility structures, except as provided in Section 3.21.05.F;
- F. Dedication and purchase of new public rights-of-way, including extensions of existing rights-of-way, except where the federal NEPA process is followed;
- G. Removal of trees, or the cutting or clearing of any noncultivated (natural) vegetation;
- H. Resource enhancement activities; and
- I. Other uses not specifically exempted from review, including land divisions.

Section 3.21.05. Exemptions from Review. The following uses are exempt from development review:

- A. Change of use where there are no exterior alterations to buildings or structures, or increases in floor area, impervious surfaces, or storage areas;
- B. The sale of property;
- C. The normal maintenance and repair necessary for an existing use;
- D. Customary dredging and channel maintenance of existing drainage facilities, but not the temporary or permanent placement of fill or dredge spoils;
- E. Temporary emergency procedures necessary for the safety or protection of property;

SECTION 3.21 - NATURAL RESOURCE OVERLAY ZONE

- F. Single utility poles required to provide service to the local area; and
- G. Development in compliance with an approved natural resource management plan (refer to Section 3.21.11) or mitigation plan (refer to Section 3.21.10).

Section 3.21.06. Development Review Process. The Planning Commission shall review applicable development requests within the Natural Resource Overlay Zone. The Review process shall be the same as for the Minor Quasi-Judicial Review for Community Service Overlay uses as described in Section 10.05 (C).

Section 3.21.07. Development Standards. In addition to requirements of the primary zone, applicants for development activities within the Natural Resource Overlay Zone shall provide a written report, as required by the Community Development Director, identifying how the activity complies with the following standards:

- A. Development activities within a designated Natural Resource Site which is adjacent to or outside of the specific natural resource location, may show by onsite survey that the boundary of the /NR Overlay Zone should exclude the activity site, but in any event, must comply with the following:
  - 1. Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution, or sedimentation to the adjacent natural resource location.
  - 2. A development setback which adequately protects the resource site is required.
  - 3. Development consisting of vehicle maneuvering and parking areas, outside storage and display areas, and trash collection areas shall also be screened from the natural resource location by sight obscuring vegetation or fencing.
  - 4. Outdoor activities including open fabrication or operations which create large amounts of noise, dust, or glare, except for river related and river dependent uses, are not allowed due to their higher potential for adverse impacts on adjacent natural resource locations.
  - 5. The types, sizes, and intensities of lights must be placed so that they do not shine directly into the natural resource locations.
- B. Development activities within a natural resource location shall comply with the following:
  - 1. Development of trails, rest points, viewpoints, and other facilities for the enjoyment of the resource must be done in such a manner so as to reduce impacts on the natural resource while allowing for the enjoyment of the natural resource.

## SECTION 3.21 - NATURAL RESOURCE OVERLAY ZONE

2. Development in areas of dense standing trees will be designed to minimize the numbers of trees to be cut. No more than 50 percent of mature standing trees (of six inch diameter or greater at a 5 ft. height) shall be removed without a one-for-one replacement with comparable species. The site plan for the proposed activity shall identify all mature standing trees by type, size, and location, which are proposed for removal, and where and what type of tree replacement (if applicable) is to occur.
3. Harvesting of uncultivated timber is not permitted except as allowed by Subsection 3.21.07.B.2 above.
4. Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, except where mitigation is approved, so as to provide a transition between the proposed development and the natural resource, provide opportunity for food, water, and cover for animals located within the natural resource location, and to protect the visual amenity values of the natural resource.
5. Natural riparian vegetation along streams and drainageways will be maintained and preserved, except where mitigation is approved. Such vegetation will be maintained for a minimum distance of 15 feet from the normal high-water line in those areas with slopes of 10 percent or less. Where slopes exceed 10 percent, an additional foot of vegetation should be preserved for each additional percent of slope increase. Selective cutting, trimming, and thinning may be allowed as necessary for access to the waterway.
6. Stormwater flows as a result of proposed development within and to natural drainage courses shall not exceed natural flows as determined by the City Public Works Department.
7. Construction practices for all projects, private and public, will include steps to ensure that land cuts are not exposed to storm-water flows. Land and trenches will be graded to allow direct flow into natural drainage courses. Grading shall not expose unprotected surfaces to water flows and possible erosion.
8. The development will be designed to have the least amount of impact on the natural features/values of the site as possible. The design should look at alternatives (design and location) to mitigate the impact.
9. Road crossings of major natural drainage courses will be minimized as much as possible.

SECTION 3.21 - NATURAL RESOURCE OVERLAY ZONE

10. The construction phase of the development must be done in such a manner to safeguard the portions of the site within the Natural Resource Overlay Zone that have not been approved for development. The effect of this is that construction equipment, construction materials, excess fill, runoff, etc. will not ultimately harm the natural resource area.
11. A mitigation plan shall be required for development activities that would adversely impact the natural resource values of the site, as per Section 3.21.10.

Section 3.21.08. Site Surveys Required. The Applicant for a development activity will be required to perform an onsite survey to inventory the location, nature, and characteristics of the natural resources when:

- A. The extent of the natural resource location is not specifically identified by the City Natural Resources Inventory; or
- B. The Applicant believes the Natural Resource Overlay Zone boundary is inaccurate; or
- C. Modifications impacting the natural resource are proposed.

Section 3.21.09. Site Survey Content. The site survey shall include the following:

- A. A scaled site plan which clearly identifies:
  1. The nature and characteristics of the natural resources onsite; including a description of species observed and habitat;
  2. The location of both existing and proposed structures, parking/maneuvering areas, utilities, and other development;
  3. The physical characteristics of the site including slope, water course location, and vegetation location and type to include species list and community types, with approximate percentage coverage, groves of trees, and all individual trees 6 inches in diameter or larger at 5 feet above the ground.
  4. Information provided for the site from the City Natural Resources Inventory.
- B. A narrative describing the proposed activity and its relation to the location of the natural resources.

## SECTION 3.21 - NATURAL RESOURCE OVERLAY ZONE

Section 3.21.10. Mitigation Plans. Development within a natural resource location has the potential of degrading or destroying the natural resource and its resource values. If avoidance of the resource area is not practical, a mitigation plan will be required if the development has the potential for reducing the natural resource value of the site in question to the point of no longer qualifying as a natural resource site on the City Natural Resources Inventory.

The mitigation plan shall include the following:

- A. The site survey with affected natural resource locations clearly located;
- B. A narrative describing the natural resources being removed or affected;
- C. A site plan indicating new natural resource locations to be created as part of mitigation or existing natural resource locations to be enhanced; and
- D. A narrative describing the proposed mitigation or enhancement activity.

Section 3.21.11. Natural Resource Management Plans. Natural resource management plans may be approved as part of the development review process for larger scale, long-term or phased developments. This approval would allow the proposed development to occur without the need for additional development reviews, provided the proposal follows the approved plan.

The natural resource management plan should include a site survey of the natural resources, a site plan, and mitigation plan. Modifications to an approved plan would require a new development review process.

Section 3.21.12. Preparation of Plans and Surveys. Natural resource site surveys, mitigation plans, and management plans shall be prepared by competent professionals with expertise in natural resources. The Applicant is responsible for the preparation of plans and surveys and for obtaining professional assistance appropriate to the nature of the particular plan or survey.

Section 3.21.13. Density Transfer and Clustering. Density transfer or clustering of development may be allowed, provided density standards of the primary zone are not exceeded, in order to avoid modifications to natural resource areas. Additional requirements for density transfer or clustering are as follows:

- A. Mitigation of the natural resources is not feasible for the site; or
- B. The natural resource values are such that modifications to the natural resource location are not desirable; and
- C. The density standards of the primary zone are not exceeded for the overall properties involved; and

SECTION 3.21 - NATURAL RESOURCE OVERLAY ZONE

- D. The natural area is preserved by one of the following methods:
1. Dedication to the City of Milwaukie;
  2. Donation to a natural resource conservancy organization; or
  3. Designation as common area to be protected and maintained as a natural area by a home owners association or similar covenants.
  4. Creation of dedicated easements or other legal protection measures as approved by the City Attorney.

Section 3.21.14. Density Transfer Offsite. Density transfer for residential development may be made to adjacent properties, provided the standards of Section 3.21.13 are met. Approval of development review requests involving density transfer offsite shall be made by the Planning Commission by a Minor Quasi-Judicial review process. In such a case, gross site density shall be determined by adding the lot areas of both the lot with the natural resource area and the adjacent lot receiving the density transfer, and dividing this total by the primary zone area requirement per unit.

Section 3.21.15. Variance for Density Transfer and Clustering. Variances for setbacks, building height, lot coverage, access and other standards of the primary zone may be allowed as part of a density transfer and clustering proposal. The review of the variance shall follow procedures of Section 7.03 and 7.04. Three approval criteria must be met as follows:

- A. No feasible alternatives exist to negate the need for a variance;
- B. The variance will create no compatibility problems or adverse effects upon other properties; and
- C. The variance is required to adequately protect the natural resource values of the site.

Section 3.21.16. Modification of Natural Resource Overlay Zone Boundaries. Natural Resource Overlay Zone boundaries may be modified as part of the development review process identified in Section 3.21.06 to reflect new boundary information obtained as part of site studies or to include new mitigation areas proposed as part of development. All other requests for boundary changes are processed as provided for in Section 9. "Amendments" and follow the Major Quasi-Judicial review process of Section 10.05(D).

Section 3.21.17. Dedication for Trails. If a proposal is on a lot that has a recreational trail designation shown either on the City Zoning Map or Comprehensive Plan Land Use Map, the easement for the trail must be granted prior to the issuance of a building permit. The trail must be constructed, a bond provided for that purpose, or a developer's agreement signed prior to the issuance of occupancy permits.

## SECTION 3.21 - NATURAL RESOURCE OVERLAY ZONE

Section 3.21.18. Coordination Among Regulatory Agencies. The regulations of other agencies may apply to development proposals for natural resource areas. These agencies may include the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, the Oregon Division of State Lands, and the Oregon Department of Fish and Wildlife. The City will notify applicable agencies for referral responses to specific development proposals prior to the issuance of City permits. The City should also encourage the Applicant to contact applicable agencies before development plans are completed so as to consider the requirements and restrictions that may be imposed by the agencies.

Section 3.22. Historic Preservation Overlay Zone (/HP). In an /HP zone the following regulations shall apply:

### 3.22.01 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 complimentary design and construction relative to cultural resources;
- F. Enhance property values 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.

### 3.22.02 APPLICABILITY

- A. Section 3.22 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 3.22.04 below.

## HISTORIC PRESERVATION OVERLAY ZONE

### 3.22.03 HISTORIC REVIEW COMMITTEE

- A. Appointment and Composition: Two members of the Planning Commission and three individuals to be appointed by the City Council shall comprise the Historic Review Committee. 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 individual appointed shall be a citizen-at-large. The three individuals shall be appointed for a term of three years and may be reappointed to, or removed from, the Committee at the discretion of the City Council.
- B. Duties and Responsibilities: The Committee 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 Resource Inventory, as provided under subsection 3.22.04.
  7. Review and make recommendation on all applications requesting designation or deletion of an Historic District as provided under Subsection 3.22.04.
  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 3.22.07.

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10. Review and make recommendation on all Conditional Use applications related to landmarks.
11. Maintain an Historic and Cultural Resource Inventory and map of landmarks.
12. Develop regulations for the protection of landmarks, such as design guidelines for adoption by the City Council.

3.22.04 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 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 Section 10.05(D) of this ordinance, substituting the Historic Review Committee for the Planning Commission. The application shall be submitted to the Community Development Director. The Historic Review Committee or the City Council may also initiate such proceedings on their own motion.

B. Historic Review Committee: The Committee, as described in Subsection 3.22.03, shall conduct a public hearing to evaluate the request. The Committee shall enter findings and make a written recommendation to the City Council.

For designation, the Committee shall determine that the resource meets the ranking standards for resource designations (as defined in Section 1.03) based on completion of the evaluation worksheet.

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

The Committee 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 Committee 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.

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- 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 Section 3.22.04.

3.22.05 ALTERATION AND DEVELOPMENT

- A. Review Required: Any exterior alteration of a landmark shall be subject to review under the provision of Section 3.22.05 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 Section 3.22.04.
- 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 Section 3.22.05.C shall follow the Type I Administrative Review process of Section 10.05 (A).
- C. Administrative Approval: The Community Development Director shall approve alteration requests if:
1. there is no change in the appearance and materials of the existing landmark; or
  2. 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.

The following minor alterations are exempt from review provided these actions meet the above standards.

1. 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;
2. Repairing, or providing a compatible new foundation that does not result in raising or lowering the building elevation;
3. Replacement of building material, when required due to deterioration of material, with building material that matches the appearance of the original material;

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4. 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;
  5. 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;
  6. Replacement of wood sashes with new wood sashes, or the addition of wood sashes when such is consistent with the original historic appearance;
  7. Installation of solar equipment so that it complies with Subsection C.5. above; and
  8. The installation of security doors and security lighting systems.
- D. Other Requests: All requests that do not meet the provisions of Subsection 3.22.05.C. shall be forwarded to the Committee. The Committee's decision will be final after notice and public hearing held the same as Section 10.05(C) of this ordinance (Minor Quasi-Judicial Review), substituting the Historic Review Committee for the Planning Commission. The Committee shall approve or disapprove issuance of the permit. The Committee 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.
  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.

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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 are 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 non-wood 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 alterations 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 4.13, 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 10.02 of this ordinance.

### 3.22.06 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.

### 3.22.07 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 Committee. 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 Section 3.22.04.
- 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 Committee 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 sale of the property to all individuals, organizations, and agencies who inquire.
- C. Public Hearing Review: The Committee shall hold a public hearing within forty-five days of application. The procedures shall be the same as those in Section 10.05(C), Minor Quasi-Judicial Review, substituting the Historic Review Committee for the Planning Commission.

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- D. Review Criteria and Findings: In determining the appropriateness of the demolition, as proposed in an application for a building permit, the Committee 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;
  3. The City of Milwaukie Comprehensive Plan, including the economic, social, environmental, and energy consequences;
  4. The purpose as set forth in Section 3.22.01;
  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 historical 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 Committee may approve the demolition request after considering the criteria under Section 3.22.07.D., above. Action by the Committee 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 Section 3.22.05.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 Committee may reject the application for permit if it determines that in the interest of preserving historical 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 Committee 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 Committee, 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 Committee 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.
3. Action by the Committee suspending issuance of the permit for demolition may be appealed to the City Council by the applicant for the permit, by filing a notice of appeal in the same manner as provided in Section 3.22.05.F.

3.22.08 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 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 Section 3.22.05. Such uses may also be allowed in the low and moderate density residential designations if located along minor or major arterial streets. Approval of such uses shall include conditions mitigating adverse impact of the use on neighboring properties and other requirements as per Section 6.00 of the Zoning Ordinance (Conditional Uses).

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C. The following uses may be permitted after a public hearing conducted pursuant to Section 10.05(C) 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. Book stores
10. Boutiques
11. Restaurants
12. Antique shops
13. Community center for civic or cultural events
14. Other uses determined by the Planning Commission to be similar to those listed above.

## Section 3.30 Mobile Home Parks

### 3.30.01 PURPOSE

This section is intended to implement the policies of the Comprehensive Plan to provide for a variety of housing types including mobile home parks in areas with suitable services and facilities in zones allowing 6-12 dwelling units per acre.

### 3.30.02 APPLICATION

Mobile home park developments are only allowed in the R-3, R-5, and R-7 zones. A site plan review is required prior to development of a mobile home park within these zones. The development must show conformance with all requirements of this section.

Each application for a mobile home park shall include a plot plan drawn to scale of the specific layout of the entire park. The plot plan shall include both the dimensions and the existing and proposed locations of all utilities, roadways, structures, parking, landscaping and open areas, and mobile home spaces on the site. In addition, the location of structures on adjacent properties shall be shown.

### 3.30.03 GENERAL REQUIREMENTS

Mobile Home Parks shall be subject to review under Section 10.05(C) of the Zoning Ordinance, Minor Quasi-Judicial Review.

### 3.30.04 DEVELOPMENT REQUIREMENTS

All mobile home parks shall meet the following minimum requirements:

- A. The minimum size of a mobile home park shall be 2 acres.
- B. The number of units allowed in the mobile home park will be subject to the density requirements of the underlying zone after 15% of the site has been deducted for access drives.
- C. A minimum setback of 15 feet will be observed between all mobile homes and the outer boundary of the mobile home park. Exterior boundaries of the park shall be screened to a height of 6 feet by a sight obscuring solid wall, fence, or evergreen or other suitable hedge planting, exclusive of required openings.

It shall be the responsibility of the property owner to install and maintain required landscaping and irrigation systems.

### Section 3.30 Mobile Home Parks

- D. Each mobile home unit or accessory structure shall maintain a minimum 10 foot setback from the private street and the nearest point of the unit or accessory structure. If the mobile home space is on the side of a private street bounded by a sidewalk, the unit or accessory structure shall be set back 10 feet from the sidewalk. Each unit or accessory structure shall be separated from any unit or accessory structure on an adjacent space by a minimum of 15 feet.
- E. A minimum of 15% of the gross site area shall be reserved for common open space for the use of all residents. Open space requirements may include up to 100 square feet per unit of indoor facilities. Outdoor open space areas should be suitably landscaped.
- F. A mobile home park shall have an entrance drive from a public street. Access to individual units shall be from private streets within the site which have a minimum width of 24 feet of paving from curb to curb. A paved sidewalk shall be provided along at least one side of each private street in the park and shall be minimum of 3 feet in width. Parking shall be permitted on one side of those private streets constructed with a minimum width of 30 feet of paving.
- G. Off-street parking and recreational vehicle parking shall be provided as per Section 5.0 of the Zoning Ordinance. If 24 foot wide streets are constructed, an additional off street parking space per each two mobile home spaces shall be provided as visitor spaces. These parking spaces shall be within 100 feet of the mobile homes they serve.
- H. Except for a structure which conforms to the state definition of a mobile home accessory structure, no other extension shall be attached to a mobile home, except a garage or carport constructed to the specifications of the Oregon State Structural Specialty Code.
- I. All mobile homes shall be set onto an excavated area with perimeter foundation, and the excavated area shall be backfilled, or the home must be installed with an approved foundation siding/skirting enclosing the entire perimeter of the home. Foundation siding/skirting and back-up framing shall be weather-resistant, noncombustible, or self-extinguishing materials which blend with the exterior siding of the home. Below-grade level and for a minimum distance of six (6) inches above finish grade, the materials shall be resistant to decay or oxidation. The siding shall be installed in accordance with manufacture's recommendations or approved equal standards.
- J. Requirements for lighting, utility systems, decks, play areas, park sanitation and maintenance not specified herein shall be those specified in OAR 814-28, Mobile Home Parks and OAR 814-23, Mobile Homes, Manufactured Homes, Recreational Vehicles and Accessory Buildings or Structures.

Section 3.30 Mobile Home Parks

- K. Standards of the underlying zone also apply except where otherwise provided for in this section.
- L. The entire mobile home park shall comply with the above requirements requirements prior to occupancy.