



COUNCIL ORDINANCE No. 2166

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 19 ZONING TO MAKE MINOR CHANGES TO SELECT SECTIONS FOR THE PURPOSE OF CLARIFICATION AND IMPROVED EFFECTIVENESS (FILE #ZA-2018-005).

WHEREAS, the proposed amendments to Title 19 make changes and clarifications that will more effectively communicate and implement existing policy related to the Willamette Greenway and Natural Resources; and

WHEREAS, legal and public notices have been provided as required by law; and

WHEREAS, on October 23, 2018, the Milwaukie Planning Commission conducted a public hearing as required by MMC 19.1008.5, and adopted a motion in support of the amendments; and

WHEREAS, the Milwaukie City Council finds that the proposed amendments are in the public interest of the City of Milwaukie.

Now, Therefore, the City of Milwaukie does ordain as follows:

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

Section 2. Amendments. The Milwaukie Municipal Code is amended as described in Exhibit B (Title 19 Zoning underline/strikeout version), and Exhibit C (Title 19 Zoning clean version).

Section 3. Effective Date. The amendments shall become effective 15 days from the date of adoption.

Read the first time on 11/20/18 and moved to second reading by 4:0 vote of the City Council.

Read the second time and adopted by the City Council on 11/20/18

Signed by the Mayor on 11/20/18

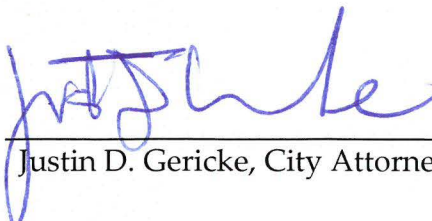


Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:



Scott Stauffer, City Recorder

Justin D. Gericke, City Attorney

Recommended Findings in Support of Approval
File #ZA-2018-005, Housekeeping Round 3 Code Amendments

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, the City of Milwaukie, proposes to amend regulations that are contained in Title 19 Zoning Ordinance of the Milwaukie Municipal Code (MMC). The land use application file number is ZA-2018-005.
2. The purpose of the proposed code amendments is to amend two sections of the code to provide for the construction of public recreation paths and trails in certain areas of the Willamette Greenway and in mapped natural resource areas. The proposed amendments are not intended to be a change of the intent of current policies. The amendments are located in the following titles of the municipal code:

Zoning Ordinance

- MMC 19.401 – Willamette Greenway Overlay – revisions to the definitions of intensification and change of use to include an exemption for the construction of low-impact pathways that are not adjacent to the river and the improvement of existing paved trails.
 - MMC 19.402 – Natural Resources – increase the permitted width of a walkway or bikepath to be consistent with ODOT trail standards.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Chapter 19.1000 Review Procedures
 4. Sections of the MMC or MCP not addressed in these findings are found to be not applicable to the decision on this land use application.
 5. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. A public hearing was held on December 13, 2016 and February 7, 2017 as required by law.
 6. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows.
 - a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

The amendments were initiated by the Planning Director on September 5, 2018.
 - b. MMC Section 19.1008 establishes requirements for Type V review. The procedures for Type V Review have been met as follows:
 - (1) Subsection 19.1008.3.A.1 requires opportunity for public comment.

Opportunity for public comment and review has been provided. The current version of the draft amendments has been posted on the City's web site since September 7, 2018. On September 7, 2018 staff e-mailed NDA leaders with information about the Planning Commission hearing and a link to the draft proposed amendments.

- (2) Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public at least 30 days prior to the hearing.

A notice of the Planning Commission's October 23, 2018, hearing was posted as required on September 21, 2018. A notice of the City Council's November 20, 2018 hearing was posted as required on October 19, 2018.

- (3) Subsection 19.1008.3.A.3 requires notice be sent to individual property owners if the proposal affects a discrete geographic area or specific properties in the City.

The Planning Director has determined that the proposal affects a large geographic area.

- (4) Subsection 19.1008.3.B requires notice of a Type V application be sent to the Department of Land Conservation and Development (DLCD) 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to DLCD on September 7, 2018.

- (5) Subsection 19.1008.3.C requires notice of a Type V application be sent to Metro 45 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to Metro on September 7, 2018.

- (6) Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the proposed amendments would affect the permissible uses of land for those property owners.

The proposed amendments generally do not further restrict the use of property. In general, the proposed amendments add flexibility.

- (7) Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application.

The Planning Commission held a duly advertised public hearing on October 23, 2018, and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on November 20, 2018, and approved the amendments.

7. MMC 19.902 Amendments to Maps and Ordinances

- a. MMC 19.902.5 establishes requirements for amendments to the text of the zoning ordinance. The City Council finds that these requirements have been met as follows.

- (1) MMC Subsection 19.902.5.A requires that changes to the text of the land use regulations of the Milwaukie Municipal Code shall be evaluated through a Type V review per Section 19.1008.

The Planning Commission held a duly advertised public hearing on October 23, 2018. A public hearing before City Council is tentatively scheduled for November 20, 2018. Public notice was provided in accordance with MMC Subsection 19.1008.3.

- (2) MMC Subsection 19.902.5.B establishes the approval criteria for changes to land use regulations of the Milwaukie Municipal Code.

- (a) MMC Subsection 19.905.B.1 requires that the proposed amendment be consistent with other provisions of the Milwaukie Municipal Code.

The proposed amendments have been coordinated with and are consistent with other provisions of the Milwaukie Municipal Code. The amendments are not intended to affect policy.

- (b) MMC Subsection 19.902.5.B.2 requires that the proposed amendment be consistent with the goals and policies of the Comprehensive Plan.

Only the goals, objectives, and policies of the Comprehensive Plan that are listed below are found to be relevant to the proposed text amendment.

The Goal statement of the Open Spaces, Scenic Areas, and Natural Resources Element reads as follows:

To conserve open space and protect and enhance natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources.

Objective #2 – Natural Resources states:

To preserve and maintain important natural habitats and vegetation by protecting and enhancing major drainageways, springs, existing wetlands, riparian areas, water bodies, and significant tree and vegetative cover while retaining their functions and values related to flood protection, sediment and erosion control, groundwater discharge and re-charge, aesthetics, education, recreation, vegetation, and wildlife habitat. Regulate development within designated water bodies, riparian areas, wetlands, uplands, and drainage areas.

The Goal statement of the Recreational Needs Element reads as follows:

To provide for the recreational needs of present and future City residents by maximizing the use of existing public facilities, encouraging the development of private recreational facilities, and preserving the opportunity for future public recreational use of vacant private lands.

Objective #7 – Riverfront Recreation states:

To maximize the recreational use of the Willamette River shoreland and waterways.

Policy #2, within Objective #7, states:

Existing waterfront park lands will be developed to maximize use and enjoyment of the river, while maintaining the environmental integrity of sensitive areas.

The Goal statement of the Willamette Greenway Element reads as follows:

To protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

Objective #3 – Land Use states:

To encourage the cooperation of public and private ownerships to provide compatible uses within the Willamette Greenway.

Policy #3, within Objective #3, states:

Within the Willamette Greenway Boundary, a Willamette Greenway Conditional Use Permit must be obtained prior to any new construction or intensification of an existing use. This policy applies until the Greenway Design Plan is adopted.

Objective #4 – Recreation states:

To maximize the recreational use of lands within the Willamette Greenway boundaries and the related waterways.

Objective #5 – Public Access and View Protection states:

To provide, improve, and maintain public access and visual access within the Greenway and to the Willamette River and Kellogg Lake.

The proposed amendments:

- *Add new low-impact trails and improvements to existing hard surface trails to a list of minor projects that are not considered a “change of use” or “intensification” in the Willamette Greenway Zone.*
 - *Public trails and pathways within parks provide a recreational benefit. The amendments include that new trails must be low-impact, which includes that they must be constructed of permeable surface material and are located a minimum of 150 ft from the river.*
 - *Several activities that are currently exempt from greenway review (such as construction of paved driveways and installation of structures associated with residential development) are similar in*

terms of environmental impact yet do not provide a public recreational benefit. Including public trails and paths within public parks in the Willamette Greenway is consistent with the type of recreational use that is expected to occur in parks.

- *A Greenway Design Plan is unnecessary as park master plans have been completed, adopted, and have been included within the Comprehensive Plan.*
- *Increase the permitted width of a walkway, trail, pathways, or bikepath subject to Type II review to be consistent with ODOT trail standards which provides clearer direction for applicability of the code provisions.*

- (c) MMC Subsection 19.902.5.B.3 requires that the proposed amendment be consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies.

- (d) MMC Subsection 19.902.5.B.4 requires that the proposed amendment be consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD did not identify any inconsistencies with relevant State statutes or administrative rules.

The proposed code amendments comply with the relevant portions of Statewide Planning Goal 15 as set forth in the findings included below. Those portions of Goal 15 that are not addressed are found not to be applicable to the proposed amendments.

GOAL 15: WILLAMETTE RIVER GREENWAY: To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

The proposed amendments allow development of public recreational trails, pathways, and walkways through the greenway in a manner that protects the natural qualities of the greenway while meeting recreational objectives. The proposal allows improvement of existing paved trail within the Greenway boundary and includes new construction and maintenance of a trail up to 12 feet in width that is set back by 150 feet from the bank of the river. This type of trail would be called a low-impact pathway, and a new definition is included. These trails will provide adequate width for walking and biking while having minimal impact on the riparian area along the river. These changes are addressed with a

new definition and in the list of activities that are not considered a change of use or intensification of use.

A. GENERAL

3. The Greenway Program shall include:

b. Management of uses on lands within and near the Greenway to maintain the qualities of the Greenway;

The proposed amendments include a minor change to the City's Willamette Greenway Overlay Zone (MMC 19.401). This is the code section that the City uses to manage land within the Greenway consistent with the state goal requirements. The change allows improvement of existing paved trails and construction of a new trail up to 12 feet wide to be exempt from greenway review provided it meets the required river setback.

C. CONSIDERATIONS AND REQUIREMENTS

The Oregon Department of Transportation (DOT) Greenway Plan, the portions of each city and county comprehensive plan within the Greenway, and the portions of plans and programs and implementation measures of all special districts and state and federal agencies within the Greenway shall be based on the following factors:

3. Use Management Considerations and Requirements. Plans and implementation measures shall provide for the following:

b. Recreation -- (1) Local, regional and state recreational needs shall be provided for consistent with the carrying capacity of the land; (2) Zoning provisions shall allow recreational uses on lands to the extent that such use would not substantially interfere with the long-term capacity of the land for farm use are defined in ORS 215.203; (3) The possibility that public recreation use might disturb adjacent property shall be considered and minimized to the greatest extent practicable;

MMC 19.401 implements Goal 15 in the City of Milwaukie. The provisions of the code require conditional use review for most development within the greenway.

Much of the greenway in the City is in public ownership so that the City has a high level of control over what happens in the greenway. Property in the greenway includes Milwaukie Bay Park, the Kellogg Creek Waste Water Treatment Plan, Spring Park, Elk Rock Island, and Kronberg Park. Improved trails currently exist through Milwaukie Bay Park, the Kellogg Waste Water Treatment Plant site, and Spring Park. Unimproved trails exist on the Elk Rock Island property. Key findings corresponding to the Use Management Considerations and Requirements for Recreation include:

- 1) A new trail is planned for Kronberg Park consistent with the Kronberg Park Master Plan that was adopted and incorporated into the City Comprehensive Plan in 2016. This trail was identified as a key feature to help meet the community's recreational needs by providing access to the park and a key connection between the downtown and the Island Station.*
- 2) The code change will have no impact on farm use since all land within Milwaukie's greenway are urban lands.*
- 3) The proposed trail traverses a currently unimproved City park that will have little or no impact on nearby private property. Trails currently exist through the other public property within the greenway.*

c. Access -- Adequate public access to the river shall be provided for, with emphasis on urban and urbanizable areas;

The proposed amendment enhances the opportunity to create trail access through the greenway.

d. Fish and wildlife habitat -- Significant fish and wildlife habitats shall be protected;

The proposed amendment for new low-impact trails ensures protection of fish and wildlife habitat through a substantial 150-ft setback from the bank of the river. In addition, for new trail projects that are wider than 12 feet of closer to the river, Willamette River Greenway review must occur through the conditional use process and the City's natural resource standards and review process apply (MMC 19.402). Trail improvements are allowed for existing paved trails.

e. Scenic qualities and views -- identified scenic qualities and viewpoints shall be preserved;

The proposed amendments will not have a negative impact on scenic qualities or viewpoints. It is more likely that the amendments will facilitate trail construction that enhances access to scenic qualities viewpoints.

f. Protection and safety -- The Willamette River Greenway Program shall provide for the maintenance of public safety and protection of public and private property, especially from vandalism and trespass in both rural and urban areas to the maximum extent practicable;

The proposed amendments will increase the opportunity for public access and recreation through public land. These areas have regular police patrols.

g. Vegetative fringe -- The natural vegetative fringe along the River shall be enhanced and protected to the maximum extent practicable;

The proposed amendments for new trails will protect the natural vegetative fringe through the required minimum 150-ft setback from the river bank for public recreational trails. Allowance for improvements to existing paved trails will have limited impacts.

k. Greenway setback -- A setback line will be established to keep structures separated from the river in order to protect, maintain, preserve, and enhance the natural, scenic, historic, and recreational qualities of the Willamette River Greenway, as identified in the Greenway Inventories. The setback line shall not apply to water-related or water-dependent uses.

The proposed amendments create a mandatory 150-ft setback for new trails that are subject to the provisions of the amendment. The City's Willamette Greenway Overlay regulates setbacks for other types of development activity.

E. COMPREHENSIVE PLANS OF CITIES AND COUNTIES

Each city and county in which the Willamette River Greenway is located shall incorporate the portions of the approved DOT Greenway Plan in its comprehensive plan and implementing ordinances and other implementation measures.

2. Uses: Each comprehensive plan shall designate the uses to be permitted for the rural and urban areas of each jurisdiction, which uses shall be consistent with the approved DOT Greenway Plan, the Greenway Statutes, and this Goal.

MMC 19.401 includes code provisions to manage uses and development within the greenway. The proposed amendments simply set out an exemption for certain types of trails.

3. Greenway Compatibility Review: Cities and counties shall establish provisions by ordinance for the review of intensifications, changes of use or developments to insure their compatibility with the Willamette River Greenway. Such ordinances shall include the matters in a through e below:

a. The establishment of Greenway compatibility review boundaries adjacent to the river within which review of developments shall take place. Such boundaries in urban areas shall be not less than 150 feet from the ordinary low water line of the Willamette River; in rural areas such boundaries shall include all lands within the boundaries of the Willamette River Greenway;

b. The review of intensification, changes of use and developments as authorized by the Comprehensive Plan and zoning ordinance to insure their compatibility with the Greenway statutes and to insure that the best possible appearance, landscaping and public access are provided. Such review shall include the following findings, that to the greatest possible degree: (1) The intensification, change of use or development will provide the maximum possible landscaped area, open space or vegetation between the activity and the river; (2) Necessary public access will be provided to and along the river by appropriate legal means;

c. Provision is made for at least one public hearing on each application to allow any interested person an opportunity to speak;

d. Provision is made for giving notice of such hearing at least to owners of record of contiguous property and to any individual or groups requesting notice; and

e. Provision is made to allow conditioning of the permit to carry out the purpose and intent of the Willamette River Greenway Statutes.

MMC 19.401 includes code provisions to address Greenway Compatibility Review. In most cases, development is reviewed through a conditional use process. In instances where impacts have been judged to be minor (maintenance, residential

accessory uses, etc.), the use is exempt from the code provisions. The proposed amendments simply set out an additional exemption for certain trails.

Implementation of the greenway program is through MMC 19.401, and includes specific uses and applicability of greenway review. The proposed code amendment would add construction of new low-impact trails and maintenance of existing paved trails to the list of activities that do not constitute a change in use or intensification and are therefore exempt from Willamette Greenway Conditional Use review. This ensures that public recreational trails that are not adjacent to the river are not unnecessarily delayed from construction, which adheres to the purpose statement of enhancing recreational opportunities near the river. The proposed amendment of allowing very specific types of trails to be exempt from greenway review is consistent and compatible with the stated purpose of Goal 15.

The proposed amendments are found to be consistent with the Transportation Planning Rule for the following reasons. The proposed text amendment does not impact the transportation system given that the amendments are clarifying in nature and do not create the opportunity for any more vehicle trips than are currently allowed by other similar uses in each respective zone. The proposed amendment helps to carry out a planned improvement in the City's Transportation System Plan: the Kronberg Park Trail.

- (a) MMC Subsection 19.902.5.B.5 requires that the proposed amendment be consistent with relevant federal regulations.

Relevant federal regulations are those that address land use, the environment, or development in the context of local government planning. Typically, regulations such as those set forth under the following acts may be relevant to a local government land use process: The Americans with Disabilities Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Fair Housing Act, the National Environmental Policy Act, the Religious Land Use and Institutionalized Persons Act, and the Resource Conservation and Recovery Act. None of these acts include regulations that impact the subject proposal or that cannot be met through normal permitting procedures. Therefore, the proposal is found to be consistent with federal regulations that are relevant to local government planning.

Underline/Strikeout Amendments

TITLE 19 ZONING ORDINANCE

CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS

19.401 WILLAMETTE GREENWAY ZONE WG

19.401.4 Definitions

“Change of use” means making a different use of the land or water which requires construction; alterations of the land, river bed, bank, water, or other areas outside of existing buildings or structures; and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure that does not substantially alter or affect the land or water upon which it is situated. Landscaping, construction of driveways, modifications of existing structures, ~~or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements (such as swing sets and patios), the improvement of existing paved recreational trails, or the construction of new low-impact pathways within parks~~ shall not be considered a change of use.

“Intensification” means any change of use; or action which increases or expands the area or amount of an existing use or the level of activity, including remodeling the exterior of a structure if the remodeling substantially alters the appearance of the structure. Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or the protection of property are not an intensification of use. Residential use of lands within the WG Zone includes the practices and activities customarily related to the use and enjoyment of one’s home. Landscaping, construction of driveways, modifications of existing structures, ~~or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements (such as swing sets and patios), the improvement of existing paved recreational trails, or the construction of new low-impact pathways within parks shall not be considered an intensification of use,~~ shall not be considered an intensification of use.

“Low-Impact Pathways” means public recreational trails or public walkways located a minimum of 150 ft from the top of Willamette riverbank and constructed of permeable material if at-grade, up to 12 ft in width.

19.402 NATURAL RESOURCES NR

19.402.11 Development Standards

E. Standards for Special Uses

Unless they are exempt per Subsection 19.402.4, or do not meet the nondiscretionary standards for HCAs provided in 19.402.11.D, the special uses listed in Subsection 19.402.7.A are subject to Type II review if they comply with the applicable standards in Subsection 19.402.11.E. Otherwise, the special uses listed in Subsection 19.402.7.A are

subject to Type III review and the general discretionary review criteria provided in Subsection 19.402.12.

4. Walkways and Bike Paths

In addition to the requirements of Subsection 19.402.11.E.1; walkways and bike paths that are not exempted by Subsection 19.402.4, or that do not meet the nondiscretionary standards for HCAs provided in Subsection 19.402.11.D, and that are proposed to be constructed or improved with gravel, permeable pavement, pavers, wood, or other materials, shall comply with the following standards:

- a. Walkways and bike paths within WQRs or HCAs shall not exceed a ~~40~~12-ft width.

Clean Amendments

TITLE 19 ZONING ORDINANCE

CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS

19.401 WILLAMETTE GREENWAY ZONE WG

19.401.4 Definitions

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- a. Walkways and bike paths within WQRs or HCAs shall not exceed a 12-ft width.