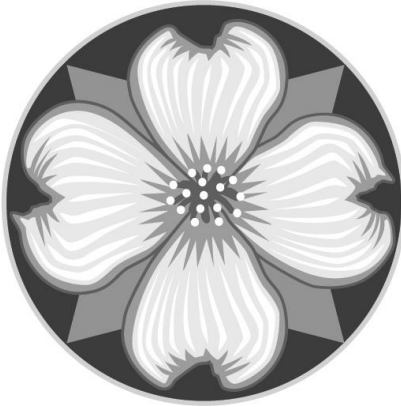




Regular Session

RS

Milwaukie City Council

COUNCIL REGULAR SESSION

City Hall Council Chambers, 10722 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

2386th Meeting**AGENDA**

AUGUST 15, 2023

Council will hold this meeting in-person and through video conference. The public may attend the meeting by coming to City Hall or joining the Zoom webinar, or watch the meeting on the [city's YouTube channel](#) or Comcast Cable channel 30 in city limits. For Zoom login visit <https://www.milwaukieoregon.gov/citycouncil/city-council-regular-session-354>.

To participate in this meeting by phone dial 1-253-215-8782 and enter Webinar ID 841 6722 7661 and Passcode: 097479. To raise hand by phone dial *9.

Written comments may be delivered to City Hall or emailed to ocr@milwaukieoregon.gov. Council will take verbal comments.

Note: agenda item times are estimates and are subject to change.

Page #**1. CALL TO ORDER (6:00 p.m.)****A. Pledge of Allegiance****B. Native Lands Acknowledgment****2. ANNOUNCEMENTS (6:01 p.m.)****2****3. PROCLAMATIONS AND AWARDS****A. None Scheduled.****4. SPECIAL REPORTS****A. None Scheduled.****5. COMMUNITY COMMENTS (6:05 p.m.)**

To speak to Council, please submit a comment card to staff. Comments must be limited to city business topics that are not on the agenda. A topic may not be discussed if the topic record has been closed. All remarks should be directed to the whole Council. The presiding officer may refuse to recognize speakers, limit the time permitted for comments, and ask groups to select a spokesperson. **Comments may also be submitted in writing before the meeting, by mail, e-mail (to ocr@milwaukieoregon.gov), or in person to city staff.**

6. CONSENT AGENDA (6:10 p.m.)

Consent items are not discussed during the meeting; they are approved in one motion and any Council member may remove an item for separate consideration.

A. Approval of Council Meeting Minutes of:**4****1. July 18, 2023, work session, and****2. July 18, 2023, regular session.****B. Monroe Street Greenway Intergovernmental Agreement (IGA) for
21st Avenue and 34th Avenue – Resolution****10**

7. BUSINESS ITEMS

- A. Parks Governance – Discussion (6:15 p.m.) 14**
Staff: Ann Ober, City Manager
- B. Payment Authorization for Non-Contracted Slurry Seal Improvements – Resolution (7:00 p.m.) 46**
Staff: Steve Adams, City Engineer

8. PUBLIC HEARINGS

- A. Design and Landmarks Committee (DLC) Code Update – Ordinance (7:15 p.m.) 51**
Staff: Laura Weigel, Planning Manager
- B. Substantive Code Amendments – Ordinance (7:45 p.m.) 84**
Staff: Vera Kolias, Senior Planner

9. COUNCIL REPORTS (8:45 p.m.)

10. ADJOURNMENT (9:00 p.m.)

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502. To request Spanish language translation services email espanol@milwaukieoregon.gov at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the [city's YouTube channel](#) and Comcast Channel 30 in city limits.

Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a ocr@milwaukieoregon.gov o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a espanol@milwaukieoregon.gov al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el [canal de YouTube de la ciudad](#) y el Canal 30 de Comcast dentro de los límites de la ciudad.

Executive Sessions

The City Council may meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660(2); all discussions are confidential; news media representatives may attend but may not disclose any information discussed. Final decisions and actions may not be taken in executive sessions.



COUNCIL REGULAR SESSION

City Hall Council Chambers, 10722 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

2386th Meeting

MINUTES

AUGUST 15, 2023

Council Present: Councilors Adam Khosroabadi, Robert Massey, Rebecca Stavenjord, and Council President Desi Nicodemus, and Mayor Lisa Batey

Staff Present: Justin Briglio, Community Development Director
Justin Gericke, City Attorney
Brett Kelter, Senior Planner
Toby LaFrance, Finance Director

Ann Ober, City Manager
Emma Sagor, Assistant City Manager
Scott Stauffer, City Recorder
Laura Weigel, Planning Manager

Mayor Batey called the meeting to order at 6:00 p.m.

1. CALL TO ORDER

A. Pledge of Allegiance.

B. Native Lands Acknowledgment.

2. ANNOUNCEMENTS

Mayor Batey announced upcoming activities, including opportunities for public input on the city's Natural Hazard Mitigation Plan (NHMP), neighborhood concerts and clean-up events, and a public hearing on plans to develop neighborhood parks. **Stauffer** and **Batey** noted a historic city hall open house and the new city hall grand opening event.

3. PROCLAMATIONS AND AWARDS

A. None Scheduled.

4. SPECIAL REPORTS

A. None Scheduled.

5. COMMUNITY COMMENTS

Mayor Batey reviewed the public comment procedures.

Ober provided follow-up reports on issues raised during the August 1 comments, explaining when Council would discuss a proposal to name the community room at new city hall. It was Council consensus to address the naming proposal during the equity study report item during the September 5 regular session as recommended by staff.

Ober noted that a community member had raised concerns about city policies and reported that staff had not responded as the commentor had not asked for a response.

It was noted that no audience member wished to speak to Council.

6. CONSENT AGENDA

It was moved by Councilor Khosroabadi and seconded by Councilor Massey to approve the Consent Agenda as presented.

A. City Council Meeting Minutes:

1. July 18, 2023, work session, and
2. July 18, 2023, regular session.

B. Resolution 43-2023: A resolution of the City Council of the City of Milwaukie, Oregon, authorizing an intergovernmental agreement between the State of Oregon and the City of Milwaukie related to the Monroe Street Greenway.

Motion passed with the following vote: Councilors Khosroabadi, Massey, Nicodemus, and Stavenjord and Mayor Batey voting “aye.” [5:0]

7. BUSINESS ITEMS

A. Parks Governance – Discussion

Ober and **Mayor Batey** provided an update on the city’s ongoing discussion about whether to remain in the North Clackamas Parks and Recreation District (NCPRD). **Batey** reported that Council would be discussing the matter with members of the Clackamas Board of County Commissioners, who serve as the NCPRD Board.

Council President Nicodemus and **Councilor Stavenjord** thanked staff and Council for the update and suggested the city deserved to have high quality parks.

Mayor Batey, **Ober**, and **Councilor Massey** noted next steps in the parks discussion.

B. Payment Authorization for Non-Contracted Slurry Seal Improvements – Resolution

Briglio and **LaFrance** explained that the requested Council action was necessary to address a staff error that had resulted in the slurry seal project being awarded to a contractor without a contract. They noted process and training changes that had been implemented to avoid this error in the future.

Councilor Khosroabadi, **LaFrance**, and **Briglio** discussed how the error could impact the annual audit and how the project had been awarded without an approved contract.

Councilors Khosroabadi and Stavenjord, **Council President Nicodemus**, and **Mayor Batey** expressed support for staff and appreciation for the efforts to change processes and require training. **Ober** acknowledged responsibility for the error and thanked staff who worked to correct it.

It was moved by **Council President Nicodemus** and seconded by **Councilor Khosroabadi** to approve the resolution, acting as the Local Contract Review Board, authorizing a payment of \$211,675.20 to Blackline Inc. for Street Surface Maintenance Program (SSMP) slurry seal improvements completed without a contract. Motion passed with the following vote: Councilors Stavenjord, Khosroabadi, Massey, Nicodemus, and Mayor Batey voting “aye.” [5:0]

Resolution 44-2023:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, AUTHORIZING A PAYMENT OF \$211,675.20 TO BLACKLINE INC. FOR STREET SURFACE MAINTENANCE PROGRAM (SSMP) SLURRY SEAL IMPROVEMENTS COMPLETED WITHOUT A CONTRACT.

The group remarked on a mailing from the Oregon Secretary of State Audit Division to Council and the Milwaukie Redevelopment Commission (MRC) and staff noted they would review and follow-up as necessary.

LaFrance noted staff’s belief that the contract error should not impact the city’s bond rating. **Ober** remarked on the importance of government transparency.

8. PUBLIC HEARINGS (moved up the agenda)

8. B. Substantive Code Amendments – Ordinance

Weigel explained that due to a noticing error the substantive code amendments hearing would be rescheduled for a future meeting.

9. COUNCIL REPORTS (moved up the agenda)

Councilor Massey reported on a Metro orientation and engagement event and a visit by United States Senator Ron Wyden to the Kellogg Creek Dam. **Mayor Batey** noted the status of the dam removal project.

Councilor Stavenjord remarked on an upcoming county housing board meeting and a recent Transportation System Plan Advisory Committee (TSPAC) meeting.

Mayor Batey reported on issues covered at the recent Oregon Mayors Association conference and noted the upcoming League of Oregon Cities (LOC) conference.

Ober provided an update on the city's partnership with local non-profit organizations that provide housing and behavioral health services at the Ledding Library.

8. PUBLIC HEARINGS (continued)

8. A. Design and Landmarks Committee (DLC) Code Update – Ordinance

Call to Order: **Mayor Batey** called the public hearing on the proposed code adoption, file # ZA-2023-005, to order at 6:55 p.m.

Purpose: **Mayor Batey** announced that the purpose of the hearing was to take public comment on the proposed DLC code update.

Conflict of Interest: No Council member declared a conflict of interest.

Staff Presentation: **Weigel** provided an overview of the staff proposal to amend the code to retire the DLC, noting the history and workload of the committee and the plans for the Planning Commission or staff to handle the committee's work.

Weigel reviewed correspondence received to-date, noted the Milwaukie Historical Society's opposition to retiring the DLC, reiterated the staff recommendation, and noted Council's decision-making options.

Councilor Khosroabadi and **Weigel** noted that the city was not a participant in the State Historic Preservation Office (SHPO) certified local government (CLG) program and commented on the workload that would be required for staff and potentially for the DLC to become a CLG. They commented on how CLG grant funding could be used for historic preservation projects and how staff planned to use the city's neighborhood hubs project to apply for preservation grants.

Councilor Stavenjord suggested that an ad hoc committee could be formed to satisfy CLG grant requirements. **Weigel** remarked on how the DLC could be retained in an ad hoc form to meet CLG requirements.

Weigel and **Council President Nicodemus** noted the staff workload required to support an ad hoc committee and the challenges of recruiting for an ad hoc committee. They also noted the role of the Planning Commission in CLG funded projects.

Correspondence: **Mayor Batey** noted staff had reported on correspondence received.

Audience Testimony: **Mayor Batey** reviewed the comment procedures.

Steve Bennett, Milwaukie Historical Society, expressed the society's opposition to retiring the DLC.

Greg Hemer, Milwaukie resident, agreed with the Planning Commission's recommendation to not retire the DLC. **Councilor Khosroabadi** and **Hemer** remarked on whether the Planning Commission could function in the same way as the DLC in design review processes. **Mayor Batey** and **Hemer** commented on the DLC's role in a previous historic resources' presentation led by staff.

Denise McGriff, National Trust for Historic Preservation, encouraged Council to update its historic resources inventory and keep the DLC. **Councilor Stavenjord**, **McGriff**, and **Mayor Batey** remarked on how often a CLG committee needed to meet and how such a committee could support the city's housing and neighborhood goals and noted the requirements of becoming a CLG.

Staff Response to Testimony: **Gericke** and **Weigel** remarked on the role of the Planning Commission and the DLC in the pre-application design review processes. **Weigel** believed the city could achieve CLG status and observed that staff had plans to update the historic resources inventory in the future and the DLC could be reinstated at that time. **Weigel** stated that staff supported preserving historic structures.

Council Questions to Staff: There were no further questions for staff.

Close Public Comment: It was moved by Council President Nicodemus and seconded by Councilor Khosroabadi to close the public testimony part of the DLC code change hearing. Motion passed with the following vote: Councilors Stavenjord, Khosroabadi, Massey, Nicodemus, and Mayor Batey voting "aye." [5:0]

Mayor Batey closed the public comment part of the hearing at 7:47 p.m.

Council Discussion:

Council discussed the current workload for the DLC and staff, whether the DLC was needed to obtain CLG status, the importance of historic preservation, and utilizing the DLC as an ad hoc as needed in the future.

Councilors Stavenjord and Massey and **Council President Nicodemus** expressed support for staff's recommendations. **Councilor Khosroabadi** and **Mayor Batey** opposed retiring the DLC.

Batey observed that no current DLC member had provided testimony on the proposal to retire the committee.

The group discussed the prioritization of city projects, including the historical resources inventory update and seeking CLG status, and how the DLC and staff workloads would be impacted by retiring the DLC.

Council President Nicodemus asked if Council was ready to vote on the ordinance.

The group discussed the DLC as an ad hoc committee and what its role could be.

Council President Nicodemus and **Weigel** commented on what action Council should take to maintain the DLC. **Mayor Batey** suggested the proposed code amendments should wait until after the upcoming planning department workplan discussion.

Council Decision: It was moved by Council President Nicodemus and seconded by Councilor Massey for the first and second readings by title only and adoption of the ordinance amending various parts of the Municipal Code (MMC) as necessary to

formally retire the Design and Landmarks Committee (DLC) (file #ZA-2023-005). Motion passed with the following vote: Councilors Stavenjord, Massey, Nicodemus voting “aye” and Councilor Khosroabadi and Mayor Batey voting “no.” [3:2]

Ober read the ordinance one time by title only.

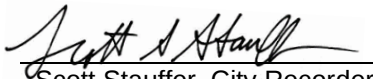
Stauffer noted that because the Council vote was not unanimous, the ordinance would be read for a second time at a separate meeting on September 5, 2023.

10. ADJOURNMENT

It was moved by Council President Nicodemus and seconded by Councilor Massey to adjourn the Regular Session. Motion passed with the following vote: Councilors Khosroabadi, Massey, Nicodemus, and Stavenjord and Mayor Batey voting “aye.” [5:0]

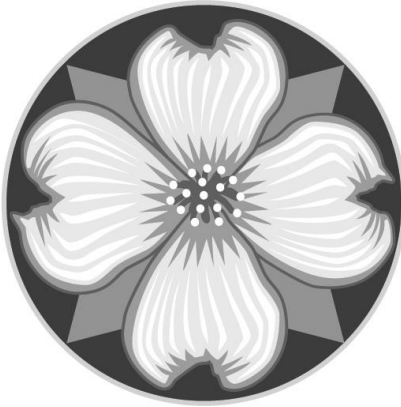
Mayor Batey adjourned the meeting at 8:26 p.m.

Respectfully submitted,



Scott Stauffer, City Recorder

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RS Agenda Item

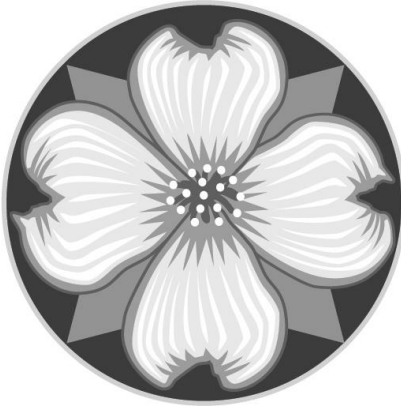
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Announcements



Mayor's Announcements – August 15, 2023

- **Natural Hazard Mitigation Plan – Feedback Collected Until August 31**
 - Review, provide comments, and ask questions about the draft plan on Engage Milwaukie at engage.milwaukieoregon.gov
- **Lewelling Concerts in the Park – Wednesdays in August (6:30 PM)**
 - Ball Michel Park, 9781 SE Stanley Ave.
- **Ardenwald-Johnson Creek (AJC) Concerts in the Park – Thursdays in August (7 PM)**
 - Ardenwald Park, 3667 SE Roswell St.
- **Johnson Creek Volunteer Clean-Up – Sat., August 19 (9 AM – 1 PM)**
 - Volunteers annually get into the creek to take out the trash
 - Register to volunteer at www.jcwc.org/events
- **Public Hearing for Balfour and Bowman-Brae Parks – Tue., August 22 (6:30 PM)**
 - Planning Commission to review development plans for two developing parks
 - Visit the website at the link below to learn how to join the webinar on Zoom
- **LEARN MORE AT [WWW.MILWAUKIEOREGON.GOV](https://www.milwaukieoregon.gov) OR CALL 503-786-7555**



RS Agenda Item

5

Community Comments

Ian L Clark
12399 SE Oatfield Rd
Milwaukie
Portland, OR
97222

July 31st 2023

Re: Corruption at Multnomah County Court (and elsewhere in Oregon).

This letter concerns **Supplementary Local Rule 7.045** (“Motion for Change of Judge”)

I am writing to notify your organization of a matter of deep public concern. There is no doubt that a **judicial dictatorship** operates at Multnomah County Court (Presiding Judge, Judith Matarazzo; *see later*). This state of affairs has been brought about by the operation of a court rule, **SLR 7.045**.

What is SLR 7.045? This rule explains to any member of the general public (lawyers and *pro se* litigants) what they must do to remove (“recuse”) a judge who they believe to be malicious or biased.

However, the provisions of SLR 7.045 are written to make that impossible, even for a lawyer. In this way, corrupt judges protect themselves and deny the people of Oregon a fair trial.

The detail of rule 7.045 is available online, by way of a search engine query. When you check the rule you will find that in order to recuse a judge any member of the public must do the following impossible tasks:

- Report any concerns to the court in writing on the day of the judge’s assignment to the case. As well as the obvious unreasonableness this term means that judges are impervious to censure throughout the proceedings;
- Produce three separate legal documents within 24 hours of notifying the court:
 - An order
 - An affidavit. An affidavit must be notarized. However, it takes 48 hours to organize a notary public’s appearance at a place such as FedEx.
 - A motion;
- Each document should meet the court’s requirements for format and presentation. Obviously, 24 hours is not a sufficient time allowance even if a notary public could be found within 24 hours;
- If a member of the public (or *pro se* litigant) makes an error, then the rule threatens to bring sanctions upon them, “including” economic sanctions.

There are many severe problems with the justice system. This rule is something that can, and must, be changed. The wider question is then one of where else in Oregon does this fraudulent rule exist?

Judge Judith Matarazzo. It is not surprising that Multnomah is a remarkably corrupt courthouse. The Presiding Judge is Judith Matarazzo. In 2017, the County DA’s office decided to steer criminal cases away from Judith, saying publicly that she is not “fair and impartial” (OregonLive, June 21, 2017). The DA’s complaints stretched back to

2008. Yet, she is now a Presiding Judge, appointed in the March of 2022. It is a state of affairs that invites your organization to act in the public interest: Abolish this rule and replace it with a rule that coheres with Federal Law (28 USC, s. 455). The correct rule would operate in every state courthouse in Oregon.

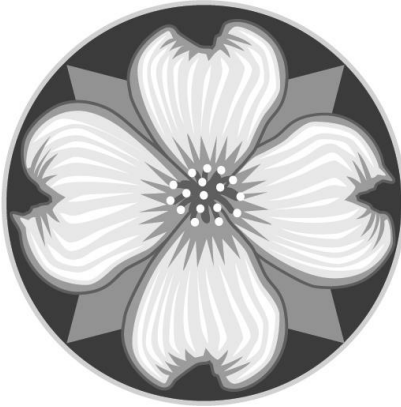
Challenging the rule - “a facial challenge”. SLR 7.045 affects everybody in the same way. This means that this issue is open to a **facial challenge**. Any individual or organization may challenge the rule at any time. I will be writing to Multnomah Court on this matter, and I expect to file a facial challenge to this rule, pursuant to **SLR 1.050(1)(b)**. Then, the state Supreme Court plays a most important role in solving this because the Supreme Court must approve SLRs. It remains to be seen what the higher courts and the state and federal DA’s offices will say about this. Previous experience predicts yet more obstruction and fraud.

Wherever rule 7.045 exists it is profanely illegal. It contradicts the essence of a justice system, violating each and every person’s Constitutional right to a fair trial.

Would your organization share its perspectives on SLR 7.045? If the resolution of this issue is appropriate to your organization’s mission, then would it propose a plan of action? I look forward to receiving your response by email, if that is convenient.

Sincerely,

Ian Clark (PhD)
LeonardClark00@gmail.com



RS Agenda Item

6

Consent Agenda

COUNCIL WORK SESSION

City Hall Council Chambers, 10722 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

MINUTES

JULY 18, 2023

Council Present: Councilors Adam Khosroabadi, Robert Massey, and Mayor Lisa Batey

Council Absent: Councilor Rebecca Stavenjord and Council President Desi Nicodemus

Staff Present: Justin Gericke, City Attorney
Toby LaFrance, Finance Director
Ann Ober, City Manager
Michael Osborne, Assistant Finance Director
Peter Passarelli, Public Works Director
Natalie Rogers, Climate & Natural Resources Manager
Emma Sagor, Assistant City Manager
Scott Stauffer, City Recorder

Mayor Batey called the meeting to order at 4:02 p.m. and noted that Councilor Stavenjord and Council President Nicodemus were excused from the meeting.

1. Risk Management for Elected Officials – Training

Marcus Pitts, with Brown and Brown Insurance, provided information on how and when the city's insurance covers Council members. **Pitts** and **Geoff Sinclair**, with Brown and Brown Insurance, shared that Council members are covered by the city's insurance only while performing within the scope of their official duties as reflected in meeting minutes or otherwise memorialized. The Group discussed what to do when Council members are invited to participate in an official capacity that has not come before Council.

Pitts and **Sinclair** presented a few scenarios that involved Council participation, where Council members could be acting outside of designated duties that would result in a loss of coverage and how those situations should be handled. **Sinclair** reviewed coverage for an ethics complaint.

Pitts defined what insurance providers consider volunteers and employees and noted when they were covered under the insurance. The group discussed how and when travel to conferences would cover members.

2. Consolidated Fee Schedule Updates – Discussion

LaFrance and **Passarelli** explained they were looking for Council direction on proposed changes to the fee schedule around reducing library fees to match others in the area, adding and updating language for tree fees to provide clarification and updates to two types tree fees, removal of a stormwater fee for an additional dwelling unit (ADU) on a single-family lot, an added tamper fee for removing a lock on a water meter, and a solid waste fee increase of 3.4% to 4.5% for residential customers and 5.6% to 6.9% for commercial customers.

Councilor Khosroabadi, **LaFrance**, and **Ober** discussed how current residents would be affected by the removal of the stormwater fee. **Khosroabadi**, **LaFrance** and **Passarelli** discussed the solid rate increase in connection with complaints Council had received regarding waste hauling services.

Councilor Massey received clarification on the presented changes for the library fees and asked if there were acceptable circumstances for topping trees. **Passarelli**

explained pollarding, how utility companies may prune a tree in a utility easement or right-of-way (ROW) that could result in topping, and that property owners should submit a permit application before pruning to avoid a topping situation.

The group discussed if single family lots with two ADUs should also have the stormwater fee removed and it was Council consensus that staff would update the language to include lots with a second ADU. The group also discussed how to address concerns around issues with the city's waste haulers.

Mayor Batey and **Ober** discussed the change in the reduction of library fees. **Batey** and **Passarelli** discussed how stormwater fees for new residential developments are the same as older residential properties which are not required to build on site retention/treatment facilities.

LaFrance advised that the changes would be brought before Council for approval at the August 1, 2023, regular session.

3. Historic and New City Hall Celebrations – Report

Stauffer reported on historic city hall's progress towards the sale to Henry Point Development and shared that an event to commemorate the building's 85 years of public service was scheduled for September 1. **Stauffer** provided an update on work at new city hall. **Mayor Batey** noted that more information on construction at new city hall could be found in a memo included in the July 18 work session packet.

Stauffer noted that staff would be moving into the new building the second week of September and that the first Council meeting at the new city hall would occur October 3. **Stauffer** shared that the grand opening for new city hall would occur on October 6.

4. Adjourn

Mayor Batey adjourned the meeting at 5:30 p.m.

Respectfully submitted,

Nicole Madigan, Deputy City Recorder

COUNCIL REGULAR SESSION

City Hall Council Chambers, 10722 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

MINUTES

JULY 18, 2023

Council Present: Councilors Adam Khosroabadi, Robert Massey, and Mayor Lisa Batey

Council Absent: Councilor Rebecca Stavenjord and Council President Desi Nicodemus

Staff Present: Justin Gericke, City Attorney	Tim Salyers, Code Compliance Coordinator
Ron Glenn, Police Officer	
Jordan Imlah, Communications Program Manager	Scott Stauffer, City Recorder
Toby LaFrance, Finance Director	Luke Strait, Police Chief
Ann Ober, City Manager	Kelli Tucker, Accounting & Contract Specialist
Peter Passarelli, Public Works Director	
Natalie Rogers, Climate & Natural Resources Manager	Courtney Wilson, Urban Forester
Emma Sagor, Assistant City Manager	

Mayor Batey called the meeting to order at 6:01 p.m. and announced that Council President Nicodemus and Councilor Stavenjord had been excused from the meeting.

1. CALL TO ORDER

A. Pledge of Allegiance.

B. Native Lands Acknowledgment.

2. ANNOUNCEMENTS

Mayor Batey announced upcoming activities, including concerts and activities in the park, Milwaukie Porchfest events, and a city manager open door session.

3. PROCLAMATIONS AND AWARDS**A. Police Department Lifesaving Award**

Mayor Batey noted the number of recent high-profile public safety incidents and expressed appreciation for Milwaukie Police Department (MPD) staff and officers.

Strait, Anna Sparks, Oregon Department of Public Safety Standards and Training (DPSST) trainer, and **Glenn** introduced themselves. **Strait** provided an overview of a health emergency that involved Sparks administering emergency aid to Glenn and presented an MPD lifesaving award to Sparks.

Sparks appreciated the award and noted that other DPSST staff had responded to the incident. Council, **Strait, Glenn**, and **Ober** appreciated Sparks' actions. **Councilor Khosroabadi** thanked MPD staff for their work.

4. SPECIAL REPORTS

A. None Scheduled.

5. COMMUNITY COMMENTS

Mayor Batey reviewed the comment procedures. **Ober** reported there was no follow-up report from the July 11 comments. No audience member wished to speak to Council.

6. CONSENT AGENDA

It was moved by Councilor Khosroabadi and seconded by Councilor Massey to approve the Consent Agenda as presented.

A. City Council Meeting Minutes:

1. June 13, 2023, study session,
2. June 20, 2023, work session, and
3. June 20, 2023, regular session.

B. Resolution 35-2023: A resolution of the City Council of the City of Milwaukie, Oregon, authorizing a public improvements contract with Tapani, Inc. for a not to exceed amount of \$4,112,478.00 for the Meek Street Pipe Installation North Phase Project (CIP-2016-Y11).

C. Resolution 36-2023: A resolution of the City Council of the City of Milwaukie, Oregon, authorizing an engineering services contract with Century West Engineering Corporation for a not to exceed amount of \$757,874 for the Harvey Street Improvements Project (CIP-2022-W56).

Motion passed with the following vote: Councilors Khosroabadi and Massey and Mayor Batey voting “aye.” [3:0]

7. BUSINESS ITEMS

A. Public Mural Program Clarification – Discussion

Imlah and **Ober** provided an overview of recent public art murals installed around the city and explained that the Arts Committee and staff would like Council feedback on using funds designated for murals to pay for other types of physical artwork.

Mayor Batey expressed support for using the mural funds for other types of art works.

Gericke noted that works of art such as sculptures would have different contractual and right-of-way (ROW) requirements than murals. **Mayor Batey** and **Ober** remarked on how other cities structured their public art funding programs.

It was Council consensus that the public mural fund could be used for other art works.

B. Adoption of Revised Public Contracting Rules (PCRs) – Ordinance and Resolution

Tucker explained that Council was asked to adopt revised PCRs and increase the city manager’s contract authorization amount. **Tucker** reviewed the process staff and the city’s Equity Steering Committee (ESC) had undertaken to identify changes to the PCRs and noted that the ESC had concern about gaps in businesses’ ability to become certified through the Certification Office for Business Inclusion and Diversity (COBID).

The group commented on county services available to local businesses and how the city’s upcoming equity study report would inform the city on business equity issues.

It was moved by Councilor Khosroabadi and seconded by Councilor Massey to approve the resolution, acting as the Local Contract Review Board, repealing existing public contracting rules, and adopting revised public contracting rules incorporating modified equity requirements. Motion passed with the following vote: Councilors Khosroabadi and Massey and Mayor Batey voting “aye.” [3:0]

Resolution 37-2023:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, REPEALING EXISTING PUBLIC CONTRACTING RULES, AND ADOPTING REVISED PUBLIC CONTRACTING RULES INCORPORATING MODIFIED EQUITY REQUIREMENTS.

Tucker explained the request to increase the city manager's signing authority, noting the impact of inflation on project costs and administrative process improvements.

It was moved by Councilor Massey and seconded by Councilor Khosroabadi for the first and second readings by title only and adoption of the ordinance, acting as the Local Contract Review Board, amending Milwaukie Municipal Code (MMC) Chapter 3.05 (Local Contract Review Board) to increase delegation of authority to the city manager. Motion passed with the following vote: Councilors Khosroabadi and Massey and Mayor Batey voting "aye." [3:0]

Ober read the ordinance two times by title only.

Stauffer polled the Council with Councilors Massey and Mayor Batey voting "aye." [3:0]

Ordinance 2232:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, AMENDING MILWAUKIE MUNICIPAL CODE (MMC) CHAPTER 3.05 (LOCAL CONTRACT REVIEW BOARD) TO INCREASE DELEGATION OF AUTHORITY TO THE CITY MANAGER.

C. Tree Code Amendments – Discussion

Rogers discussed why the city had a tree code, the types of trees the city regulates, and reviewed proposed code changes including updated definitions and streamlined permit and violation processes and standards. **Passarelli** and **Rogers** noted when the revised tree code would be brought for Council adoption.

Councilor Massey, Rogers, and Salyers remarked on public outreach staff would do after a revised tree code was adopted.

Mayor Batey and **Rogers** reviewed proposed code language changes related to removing damaged trees, the impact of internal accessory dwelling units (ADUs) on trees, and how the tree code is structured in general.

D. Business Registration Code Amendments – Discussion

LaFrance provided an overview of the city's business tax code and fees, noted recent communications with vendors at community events, and reported how other cities handle business registrations. **LaFrance** explained the recommendation for staff to solicit input from stakeholder groups and return to Council for further discussion.

Councilor Khosroabadi and **LaFrance** commented on how other cities' handle vendors at farmers markets and special events. **Councilor Massey** and **LaFrance** remarked on differences between the Milwaukie Farmers Market and First Friday events. The group commented on differences between vendors in 2023 and before the COVID-19 pandemic and noted that the city had historically waived registration fees for vendors at community events.

The group noted the value of the city knowing who is operating in the city and the feasibility of requiring a business license for vendors on city property.

Mayor Batey supported staff researching the issue and coming back to Council and suggested the term “business tax” be changed. **LaFrance** and **Batey** noted how other cities set business fees. **Ober** added that staff would provide a tax training for Council.

Councilor Khosroabadi supported exempting vendors at community events if the event organizers provide a list of vendors to the city. **Ober** commented on how exempting vendors could be feasible if code enforcement processes were spelled out.

LaFrance summarized that Council supported the staff recommendation. **Ober** thanked community event organizers and staff for working on the issue and **Councilor Khosroabadi** thanked Ober for waiving the fees for 2023.

Mark Stehn, Celebrate Milwaukie, Inc. (CMI), and **Ober** confirmed that the 2023 business registration fee had been waived and the city was asking vendors to still register so the city had their contact information.

Shalena Havens, First Friday Milwaukie Co-Chair, encouraged the city to remember that some vendors were hobbyists who do not make much money.

Sagor thanked CMI and First Friday Milwaukie for working with staff on the issue.

8. PUBLIC HEARING

A. None Scheduled.

9. COUNCIL REPORTS

Councilor Massey reported on topics discussed at a recent North Clackamas Watersheds Council (NCWC) meeting, including the Kellog Dam removal project.

Councilor Khosroabadi discussed issues raised at recent North Clackamas Parks and Recreation District (NCPRD) District Advisory Committee (DAC) and Clackamas County Water Environment Services (WES) meetings.

Ober reported that the Milwaukie Junior Baseball 12U team coached by Salyers had taken fourth place at the state tournament. **Salyers** added that his son had been awarded the sportsman award at the state tournament.

Ober also reported that staff was in communication with the North Clackamas School District (NCSD) Board to schedule a joint meeting with Council.

10. ADJOURNMENT

It was moved by Councilor Khosroabadi and seconded by Councilor Massey to adjourn the Regular Session. Motion passed with the following vote: Councilors Khosroabadi and Massey and Mayor Batey voting “aye.” [3:0]

Mayor Batey adjourned the meeting at 8:00 p.m.

Respectfully submitted,

Scott Stauffer, City Recorder

COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Reviewed: Joseph Briglio, Planning Director
Jennifer Garbely, Assistant City Engineer

From: Brandon Boutros, Civil Engineer

Subject: **Monroe Street Greenway Intergovernmental Agreement: 21st Ave – 34th Ave**

Date Written: August 8, 2023

ACTION REQUESTED

Council is asked to approve a resolution authorizing an intergovernmental agreement with the State of Oregon related to the administration of state funds for construction of the Monroe Street Greenway.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[December 1, 2015](#) - City Council adopted the Monroe Street Neighborhood Greenway Concept Plan with R107-2015 with the direction to City Staff to “conduct additional modeling of traffic data and then coordinate with other agencies as needed and where to test possible diverter locations proposed in the Concept Plan.”

[February 6, 2018](#) - Council adopted R8-2018 authorizing an intergovernmental agreement with Clackamas County to work together to further study the impacts of the proposed concept plans.

[March 20, 2018](#) – Staff presented the findings from an extensive traffic study performed together with Clackamas County to determine the potential impacts associated with the Monroe Street Greenway concepts. Council directed staff to proceed with staff’s recommendation to utilize the Washington Street option of the concept plan.

[June 5, 2018](#) – Council adopted R36-2018 to modify the adopted concept plan to include the Washington Street alignment option with added pedestrian elements along the Washington Street corridor and eliminate diverters at the Monroe Street intersections with 42nd Avenue and 37th Avenue.

[January 16, 2020](#) – Metro Council awarded \$3,860,788, as part of the Regional Flexible Fund Allocation program, to the City to construct segments D and E of the Monroe Street Greenway.

[July, 2020](#) – Oregon Transportation Commission approved the 2021-2024 Statewide Transportation Improvement Program which includes \$5,557,917 in funding for improvements at the intersection of OR-224 and Monroe Street.

[May, 2021](#) – Council received an update from staff on the project.

ANALYSIS

The Monroe Street Greenway was originally broken down into the five segments listed below:

- A – 21st Ave. to OR-224
- B – OR-224 to Campbell St.
- C – Campbell St. to Oak St. & Monroe St.
- D – Washington Street Bike Route
- E – Home to Linwood Ave.

The project is now broken down into the following new segments:

- Downtown Monroe Greenway – McLoughlin Blvd. to 29th Ave.
- Central Monroe Greenway – 29th Ave. to 34th Ave.
- Seven Acre Apartments – 34th Ave. to 37th Ave.
- East Monroe Greenway – 37th Ave. to Linwood Ave.

The Central Monroe Greenway segment is scheduled to begin design in-house next year. The intergovernmental agreement outlines the terms and conditions of the transfer of \$1,547,633 from the State of Oregon to the City for the construction phase of the Monroe Street Greenway between 21st Avenue and 34th Avenue. These funds are a part of a larger funding package for the project from the Statewide Transportation Improvement Program's \$5,557,917 for improvements at the OR-224 and Monroe Street intersection.

BUDGET IMPACT

The adopted 2023 – 2024 Milwaukie budget includes project funding that meets the terms of the IGA.

WORKLOAD IMPACT

Engineering staff has anticipated this project as part of their work program and have planned for capacity.

CLIMATE IMPACT

The Monroe Street Greenway will facilitate active transportation within Milwaukie by making it easier and safer to travel by bike. A reduction in vehicle trips within the city will help the city meet its goal of being carbon neutral by 2045.

COORDINATION, CONCURRENCE, OR DISSENT

None.

STAFF RECOMMENDATION

Authorize an IGA with the State of Oregon so the construction budget is prepared as we progress into the design phase.

ALTERNATIVES

Deny approval.

ATTACHMENTS

1. Resolution

COUNCIL RESOLUTION No.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF OREGON AND THE CITY OF MIWAUKIE RELATED TO THE MONROE STREET GREENWAY.**

WHEREAS resolution 107-2015 adopted the Monroe Street Neighborhood Greenway Concept Plan and directing staff to conduct additional work and report back to council; and

WHEREAS the Oregon Transportation Commission approved the 2021-2024 Statewide Transportation Improvement Program which includes \$5,557,917 in funding for improvements at the OR-224 and Monroe Street intersection; and

WHEREAS the Oregon Transportation Commission approved a formal project amendment allowing the transfer of \$1,547,633 from the ODOT Signal Improvements project at the intersection of OR-224 and Monroe Street to create a child project to be delivered by the City of Milwaukie that will connect the Monroe Street Greenway with the ODOT Signal Improvements project; and

WHEREAS the intergovernmental agreement would execute the state approved transfer of funds from the State of Oregon's Statewide Transportation Improvement Program to the City of Milwaukie for the Monroe Street Greenway.

Now, Therefore, be it Resolved that:

The City Council directs City staff to implement an intergovernmental agreement on behalf of the City of Milwaukie.

Introduced and adopted by the City Council on **August 15, 2023**.

This resolution is effective immediately.

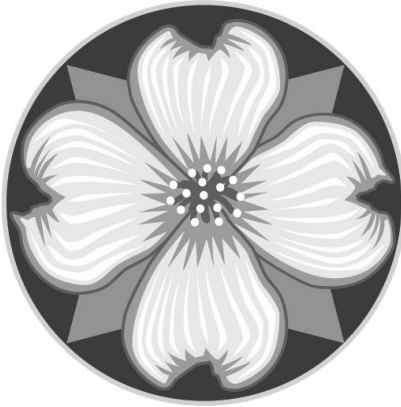
Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney



RS Agenda Item

7

Business Items

COUNCIL STAFF REPORT**To:** Mayor and City Council**Date Written:** August 9, 2023**Reviewed:** Ann Ober, City Manager**From:** Emma Sagor, Assistant City Manager**Subject:** **Parks Governance****ACTION REQUESTED**

Council is asked to discuss and provide direction on next steps related to parks governance in the City of Milwaukie.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

- In 1990, the city and Clackamas County worked together to create a new Parks and Recreation entity – the North Clackamas Parks and Recreation District (NCPRD). The district is “governed by Clackamas County’s Board of County Commissioners. NCPRD is the only parks and recreation district structured as a county service district in the state of Oregon. Other urban parks districts are structured as independent districts under Oregon Revised Statute (ORS) 266, which was created specifically for parks and recreation districts.” (NCPRD Website, 2022)
 - Since its inception, the city’s relationship with NCPRD has been governed by an Intergovernmental Agreement (IGA). The original agreement was signed in 1990 and subsequent amendments were adopted in 1992, 1995, 2008 and 2020.
- Prior to and since joining the district, the city has been the primary developer of park spaces within the city. Currently, the city is constructing Balfour, Bowman Brea, and Scott Parks. The city’s 2023-2027 adopted Capital Improvement Plan (CIP) includes funding for Dogwood Park (2024) and realignment of the Trolley Trail at Milwaukie Bay Park (2027).
- Over the past several years, Council has grown increasingly frustrated with the governance of NCPRD.
 - In 2019 and 2020, NCPRD created a new District Advisory Committee (DAC) to replace the previous District Advisory Board. As the construct of the Committee was outlined in the city’s IGA, the city was included as a stakeholder. Though we reached agreement, the process was long and involved regular pointed attacks at city leadership.
 - In 2020, city staff met with NCPRD to negotiate a financial contribution from the city to the Milwaukie Bay Park construction project. The city approved that IGA promptly and forwarded it to the county. Though making no written financial commitments themselves, the County Commission pulled the agreement on November 17 from their commission meeting. The city had to again engage to move the agenda item forward on December 3. The process caused further issues within the relationship.

- In 2021, County Commissioner Paul Savas proposed, and the Commission approved placing a hold on budget line items for Milwaukie Bay Park until the county had “a Cooperative IGA with the City of Milwaukie” and “System Development Charge (SDC) funding [is] discussed with the District Advisory Committee.” To meet the named cooperative agreement, Mayor Mark Gamba and Commissioner Savas held subsequent negotiations to fund the construction of Milwaukie Bay Park, beginning on July 7 and lasting until October 7, 2021. Just after the negotiations started, the Commission again removed a Milwaukie Bay Park agreement (July 22) from their agenda.
- City Councilors individually testified at the Commission meetings and the Commission approved the contract in August 2021. Negotiations between Commissioner Savas and Mayor Gamba were completed in October 2021. Those negotiations produced two agreements – an IGA to construct Milwaukie Bay Park and an amended finance IGA outlining a financial commitment from both parties to fund the park. The city quickly adopted both agreements in November 2021, with a June 2022 sunset clause to allow for the project to continue without further price escalations. The Commission approved the construction IGA that November but did not approve the financial IGA.
- On Oct 7, 2021, NCPRD staff provided Milwaukie staff with an overview of next steps for the NCPRD process to approve the finance agreement. The email outlined that NCPRD staff would provide an overview of the agreement to the DAC and that the commission would take up the agreement before December 8, when the DAC would receive the approved agreement. On October 27, 2021, the Commission removed the items from their agenda and directed NCPRD staff to return the item to the DAC for their recommendation. On Jan 12, 2022, the item was heard by the DAC and unanimously approved by the Commission. It was then sent to the NCPRD Board. On January 20, February 15 and February 17, 2022, the item was again removed from the Commission agenda. On March 31, 2022, the Commission allowed the financing IGA item to remain on their agenda. At that meeting, they approved the agreement and added the stipulation that the funds could not be spent until a third IGA (known as the updated Master IGA) was negotiated and approved. The draft provided to the city removed prior language allowing the city to leave the district at any time.
- [May 10, 2022](#): Council directed staff to determine city’s legal path for leaving the district and to investigate the feasibility for the city to provide parks services.
- [August 9, 2022](#): Council heard an update from staff. Staff presented an option for funding a Milwaukie parks department with a voter approved levy, and Council discussed other funding options. Council also discussed parks SDCs, as well as a 2018 resolution approved by Council that would allow NCPRD to use SDCs from Milwaukie outside of the city. Council directed staff to bring the levy and SDC resolution to the August 16, 2022, regular session and move forward with developing a city parks department concept.
- [August 16, 2022](#): Council passed a resolution [4:1] calling for a vote in November 2022 on the establishment of a five-year parks and recreation local option levy in place of the NCPRD tax. Council also passed a resolution [5:0] rescinding its support for eliminating zones within the NCRD for the purposes of SDC distribution.

- [September 6, 2022](#): Council passed a resolution [5:0] withdrawing the ballot measure planned for November to give the city more time to explain why it wants to leave the NCPRD and to see whether the district would refer its own ballot measure to voters.
- [September 20, 2022](#): Council added a third Council goal focused on parks by resolution [5:0].
- [October 4, 2022](#): Council discussed potential allocations of park funds.
- [November 10, 2022](#): Council held a community forum to discuss parks.
- [December 6, 2022](#): Council discussed whether to put a parks levy measure on the March 2023 special election ballot and the feasibility of completing the necessary engagement prior to that time.
- [February 14, 2023](#): Council received a presentation about preferred SDC methodology. Council discussed the need for an action plan if they were going to refer a park levy on the November 2022 ballot. Council also discussed reasons for keeping parks a Council goal even if Council decided to remain with NCPRD.
- [April 18, 2023](#): Council discussed whether to adopt parks as a third Council goal. Council approved three goals of climate action; equity, justice, and inclusion; and parks by resolution [4:1].
- On May 16, 2023, a county circuit judge ruled that the withdrawal method agreed by the city and NCPRD in their 2008 IGA was beyond their legal authority under state law. The judge's ruling states that the NCPRD Board of Directors must agree to allow Milwaukie to withdraw and refer the question to voters district wide.
- On June 21, 2023, the City of Milwaukie appealed the circuit judge's decision to the Oregon Court of Appeals.

ANALYSIS

The [staff report prepared for the August 16, 2022, Council Regular Session](#) contains a detailed analysis of the history of city and NCPRD relations as well as legal context and financial considerations of leaving the district. That report is available via the link above and is included as an attachment.

Since that report was completed, a county circuit judge ruled that Milwaukie cannot leave NCPRD by Council vote, but must follow the process outlined in ORS 198, which requires the NCPRD Board of Directors to approve a petition and refer the question to a district wide vote. The city appealed this decision, and we are awaiting the result of that appeal.

There have also been recent conversations about whether NCPRD may reintroduce a measure to voters in 2023 to re-form as an independent district, separate from county government. At this time, it does not appear this will occur in 2023.

While we wait for the results of the appeal, staff are seeking direction on what actions Council wants to see related to their adopted goal around parks governance as well as a discussion among councilors of next steps in the negotiating process with NCPRD.

BUDGET IMPACT

City staff conducted several budget analyses to determine operational and maintenance costs for parks. Using several sources of data, discussions with other park providers and some

reasonable assumptions, Milwaukie staff developed estimates for park operation and maintenance. Preliminary estimates using the methodology developed by the consulting firm ECONorthwest for the Oak Lodge Governance Project suggested that the \$1,271,000 Milwaukie would receive from a similar property tax would be sufficient for our initial operations, maintenance, and programming.

As parks is a Council goal, there is budget set aside to advance work in this area. Without clear direction on next steps Council would like us to take, staff are not certain how to program that budget or what to prioritize in the development of the next biannual fiscal budget (fiscal year (FU) 2025 and FY 2026).

WORKLOAD IMPACT

Staff have spent significant time analyzing alternatives and supporting negotiations with NCPRD over the last several years. Staff is seeking direction from Council on next steps to ensure staff time is spent on the highest priorities of the Council moving ahead.

CLIMATE IMPACT

None.

COORDINATION, CONCURRENCE, OR DISSENT

The content of this staff report as well as previous reports on this topic have been developed in partnership with the city attorney, public works staff, and Strategic Engagement Team (SET).

STAFF RECOMMENDATION

Staff recommends that Council clarify the following:

- What are the next steps in terms of negotiating with NCPRD and the county, and what, if any, role are staff expected to serve in those negotiations?
- What direction can Council provide to staff on priorities related to the parks council goal, specifically to inform budget preparations for FY 2025 and FY 2026.

ATTACHMENTS

1. Staff report for August 16, 2022, regular session discussion on parks governance.

COUNCIL STAFF REPORT

To: Mayor and City Council

Date Written: Aug 5, 2022

Reviewed: Kelly Brooks, Assistant City Manager
Peter Passarelli, Public Works Director
Adam Moore, Parks Development Coordinator
Justin Gericke, City Attorney
From: Ann Ober, City Manager

Subject: **Parks History and Funding Measure**

ACTION REQUESTED

City Council has asked staff to investigate the path to departing North Clackamas Parks and Recreation District (NCPRD) as the city's park provider. This staff report provides the history and background of the city's relationship with NCPRD. It also addresses potential avenues to leave the district and investigates future funding options to fund a city parks department. Due to existing litigation and questions relating to the departure process, staff will not request a final decision at this meeting about leaving the district. The purpose of today's discussion, however, is to determine council's interest in advancing a funding measure to fund future parks services in the city. It is also to determine the Council's opinion on the current SDC process underway at NCPRD.

Council Direction

On May 10, 2022, Council directed staff to investigate leaving the district. That direction required staff to take the following actions:

- 1) Determine city's legal path for leaving the district.
- 2) Investigate the feasibility for the city to again provide parks services.
 - a. Determine the current park needs
 - b. Determine the cost to provide maintenance and operation services to the current standard.
 - c. Investigate programming partnerships with NCPRD and alternative agencies.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

In 1990, the City and Clackamas County worked together to create a new Parks and Recreation entity – NCPRD. The district is “governed by Clackamas County’s Board of County Commissioners. NCPRD is the only parks and recreation district structured as a county service district in the state of Oregon. Other urban parks districts are structured as independent districts under ORS 266, which was created specifically for parks and recreation districts.”(NCPRD Website, 2022)

Since its inception, the city's relationship with NCPRD has been governed by an Intergovernmental Agreement (IGA). The original agreement was signed in 1990 and subsequent amendments were adopted in 1992, 1995, 2008 and 2020. Throughout that time, the

entities have also adopted several project specific agreements. The city's ability to withdraw was an important consideration in participating in the district and always understood to be a decision of council.

Milwaukie Parks

Prior to and since joining the District, the city has been the primary developer of park spaces within the city. Currently, the city is constructing Balfour, Bowman Brea and Scott Parks. The city's 2023-2027 adopted capital improvement plan includes funding for Dogwood Park (2024) and realignment of the Trolley Trail at Milwaukie Bay Park (2027).

Milwaukie currently offers 87 acres of parks and natural open spaces, not including trails or linear parks. 82.8 acres is dedicated as park land. The remaining acreage is public right of way, natural areas, and detention ponds. Given Milwaukie's current population based on the US Census's American Community Survey for 2021, Milwaukie currently offers 3.93 acres of dedicated parkland per 1000 residents. Oregon's Statewide Comprehensive Outdoor Recreation Plan (SCORP) recommends between 6.25 acres and 13.5 acres of public parkland per 1,000 residents. Both before and since creating the district, these parks have largely been constructed by the city (instead of NCPRD), utilizing grants and city resources. The exceptions to this have been early investments in North Clackamas Park, construction of Wichita Park in 2019 and the unpaved natural trails in Spring Park and Kornberg Park.

Milwaukie Bay Park

Planning for Milwaukie Bay Park—previously named Riverfront Park—began in earnest in 1998 with the establishment of the Milwaukie Riverfront Task Force by the City Council with a mission to advance the development of the park. Subsequently, the Downtown and Riverfront Land Use Framework Plan adopted in 2000 (and updated in 2015) identified development of the Riverfront Park as a high priority project. The plan recognized the park as the City's "living room," established it as a location for special events, and called for strengthened connections to the north and south and to downtown.

Master planning began in 2005 with a survey to determine what components the community would like to see included in the park. City Council approved of the preliminary plan in 2006; the Milwaukie Design and Landmarks Committee and Milwaukie Planning Commission approved the master plan in 2010. The park's planned amenities represented the core values of the community: promoting health and quality of life, and creating new opportunities for fitness, recreation, social and civic engagement. The plan included new parking areas north and south of Kellogg Creek, a play area for children, two restroom facilities, a performance venue for cultural arts, a festival lawn, pathways for pedestrians and bikers, improved pedestrian crossings from downtown to the park and two overlooks for river viewing including improvements located near the Kellogg Waste Treatment Plant. Because full funding of the master plan with an estimated cost of \$8.7 million was not secured, civic leaders anticipated the improvements would be built in phases.

In November 2012, the city took on the initial construction of the park, starting with the overlook at Klein Point. That phase was quickly followed by Phase 2, the parking and boat ramp area of the park. In July 2013, the city was awarded two grants for the development of the next phase of the park. For Phase 2, the city secured and funded a total of \$2.5 million dollars in project development. This phase brought a new boat launch and boarding float, a riverside pathway and plantings, a small restroom, parking areas north and south of Kellogg Creek and

vehicle access improvements along McLoughlin Blvd. This portion of the project was dedicated on May 1, 2015.

In 2016, the space experienced significant flooding, which damaged the waterfront of the property. With funds largely contributed by the Federal Emergency Management Aid office, the city reconstructed Kellogg Bridge (located inside the park) and completed the designed work for the waterfront portion of the park including stone stairs to the waterfront and Milwaukie Bay beach. In 2017, we also renamed the park Milwaukie Bay Park (previously known as Riverfront Park).

Following a verbal agreement between the City Manager and Executive Director of NCPRD in 2017, the County initiated what was intended to be a modest update to the master plan but transitioned to a full redesign of Milwaukie Bay Park. According to the bid documents at the time Phase 3 was started, a majority of the Master Plan elements had been accomplished. With these items completed and with removal of the park concepts located next to the Kellogg Treatment Plant, the city evaluated the remaining costs for the park to be approximately \$3.5 million as assessed by the city engineer in 2017. Since the park was regional in nature and current use, the city asked NCPRD to partner in the funding and construction of Phase 3.

Since that initial agreement, NCPRD has done a complete overhaul of the design. After the robust planning and design process, the total cost of Phase 3 is now being priced at \$7.869 million for construction without contingency costs or soft costs (approximately \$1.5 million). The majority of these new costs stem from increased cost of construction.

Procedural Delays and Failed Negotiations (2020-2022)

Over the past several years, council has grown increasingly frustrated with the governance of NCPRD. During meetings specific to the creation of the District Advisory Committee (DAC) and subsequently as the city and county have met to discuss Milwaukie Bay Park, there has been a shift at the board level to reduce services and capital funding provided to the city for shared amenities and services.

In 2019 and 2020, NCPRD created the new DAC to replace the previous District Advisory Board. As the construct of the Council was outlined in the City's IGA, the city was included as a stakeholder. Though we reached agreement, the process was long and involved regular pointed attacks at city leadership.

In 2020, city staff met with NCPRD to negotiate a financial contribution from the city to the Milwaukie Bay Park construction project. The city approved that IGA promptly and forwarded it to the County. Though making no written financial commitments themselves, the County Commission pulled the agreement on November 17 from their commission meeting. The city had to again engage to move the agenda item forward on December 3. The process caused further issues within the relationship.

In 2021, Commissioner Savas proposed, and the Commission approved placing a hold on budget line items for Milwaukie Bay Park until the county had "a Cooperative IGA with the City of Milwaukie" and "SDC funding [is] discussed with the District Advisory Committee." To meet the named cooperative agreement, Mayor Gamba and Commissioner Savas held subsequent negotiations to fund the construction of Milwaukie Bay Park, beginning on July 7 and lasting until October 7, 2021. Just after the negotiations started, the commission again removed a Milwaukie Bay Park agreement (July 22) from their agenda – this time the

construction contract. City Councilors individually testified at the commission meetings and the Commission approved the contract in August 2021.

Negotiations between Commissioner Savas and Mayor Gamba were completed in October 2021. Those negotiations produced two agreements – an IGA to construct Milwaukie Bay Park and an amended finance IGA outlining a financial commitment from both parties to fund the park. The city quickly adopted both agreements in November 2021, with a June 2022 sunset clause to allow for the project to continue without further price escalations. The Commission approved the construction IGA that November but did not approve the financial IGA.

On Oct 7, NCPRD staff provided Milwaukie staff with an overview of next steps for the NCPRD process to approve the Finance agreement. The email outlined that NCPRD staff would provide an overview of the agreement to the DAC and that the commission would take up the agreement before December 8, when the DAC would receive the approved agreement. On October 27, the Commission removed the items from their agenda and directed NCPRD staff to return the item to the DAC for their recommendation. On Jan 12, the item was heard by the DAC and unanimously approved by the Commission. It was then sent to the NCPRD Board. On January 20, February 15 and February 17, the item was again removed from the Commission agenda.

On March 31, 2022, the Commission allowed the financing IGA item to remain on their agenda. At that meeting, they approved the agreement and added the stipulation that the funds could not be spent until a third IGA (known as the updated Master IGA) was negotiated and approved. The draft provided to the city removed prior language allowing the city to leave the district at any time.

ANALYSIS

As was stated above, there are two components to leaving the district – process and availability of funds. Specific to this process, there are two statutes in the Oregon law that specifically outline the process for leaving a district. The city's Master IGA with NCPRD states the city will use ORS 222, which would require public noticing, followed by a vote of the city council. The second, ORS 198, would require County Commission action. This section provides an overview of both, plus an alternative path that may become available to the city at a future date.

ORS 222 - Mediation and Validation Process

On May 18, the city contacted NCPRD Director Michael Bork to affirm the city's ability to leave the district using language included in our IGA:

The city may choose at any time to withdraw entirely from the District pursuant to ORS 222.524 or its successor statute (attached).

County Counsel Jeff Munns contested our assertion in a May 19 letter(attached). According to the IGA, the initial step in a contested provision is mediation and on July 6, 2022, the city and NCPRD met through a mediator. Mediation did not resolve the issues.

NCPRD's position is that the ORS 222.524 process is not available, and the withdrawal process of Chapter 198 is applicable. As stated during meditation, the City thereafter filed a Validation Petition pursuant to ORS 33.710 and 33.720 (Clackamas County Circuit Court Case No. 22CV22550) for a declaration as to the withdrawal provisions of the Agreement. The City also

agreed to provide preliminary concepts on City withdrawal and provision of park and recreation services. The county's response to date has been to request to extend mediation.

ORS 198

As discussed above, NCPRD believes the city's path to leaving the district is codified under ORS 198. That process provides that owners of land included in a district or electors of an area within a district may petition the county board for withdrawal of the property from the district. Notice of the petition for withdrawal must be in writing and within five days after the petition is filed, petitioners shall furnish the secretary with a copy of the petition as filed. The county board may approve the petition as presented or it may adjust the boundaries and approve the petition. The petition shall be denied if it appears that it is, or would be, feasible for the territory described in the petition to receive service from the district.

Opt out of the New District

In 2014, NCPRD placed Ballot Measure 3-451 on the ballot. The measure would have re-formed NCPRD as an independent district, separate from county government. The measure failed. However, conversations have again started at NCPRD about the possibility of reintroducing the measure to voters in May 2023.

According to the statute, the new district would need to gather permission from all cities included in its boundaries. The city could, at that time, decline to participate in the new district and would then be independent should the vote pass in the rest of the district.

Current Needs

The second component to Council's request is understanding the city's ability to provide these services if we do leave. This request has required city staff to evaluate and analyze our current assets, service levels and programs.

Deferred Maintenance

Staff's first step was to review Milwaukie's parkland and park amenities. Based on estimated age and condition of infrastructure, the inventory was adjusted, and an updated replacement schedule was developed. This assessment concluded that there was at least \$941,000 in deferred maintenance and replacements costs in Milwaukie parks.

Staff also compared the inventory of Milwaukie's parkland and amenities to State of Oregon guidelines and recommendations for park and recreation service that come from the SCORP. The SCORP guidelines make recommendations for the number of acres of park land and number of amenities offered to the public based population size. Based on this analysis, Milwaukie is currently deficient in several areas.

As stated above, Oregon's SCORP recommends between 6.25 acres and 13.5 acres of public parkland per 1,000 residents. Other organizations such as the Trust for Public Land (6 acres per 1,000 residents) and National Recreation and Park Association (10 acres per 1,000 residents) also make recommendations on park acreage. Based on these recommendations, Milwaukie, with its current population, needs between 44 and 181 acres of additional dedicated parkland. Through the master planning process, it will be up the City of Milwaukie to determine how much parkland it feels is appropriate for it to offer. For example, the City of Happy Valley recently determined that it should provide 4 acres of parkland per 1,000 residents.

Source*	Standard Acres per 1,000	Acres Needed to Meet Standard
<i>City of Milwaukie - Current Conditions**</i>	3.93	
National Recreation & Parks Association	10	128
State of Oregon - Low	6.5	49
Trust for Public Lands	6	44
City of Happy Valley	4	2

Amenities and capital needs

Using these same tools, staff also determined that Milwaukie is currently deficient in several amenities within our current park assets. As an example, the city does not have any pickleball courts, basketball courts, soccer fields or lacrosse fields. To determine the future level of service, the city would need to undertake a robust community engagement and master planning process, which could take at least 18 months and would be initiated following a decision to leave the district. This information would be incorporated into Milwaukie's parks capital improvement future funding strategies.

Programming

Ongoing programming – namely at the Milwaukie Center (a city facility) and Aquatic Center (a NCPRD facility) – have been top priorities in conversations with local residents about a potential departure from NCPRD. Currently the Milwaukie Center provides a significant number of senior and aging services, funded using federally granted aging services dollars. The Milwaukie Center is one of 10 centers providing aging services in Clackamas County (CANBY Adult Center, ESTACADA Community Center, GLADSTONE Senior Center, HOODLAND Senior Center, LAKE OSWEGO Adult Center, MOLALLA Community Adult Center, PIONEER Community Center, SANDY Senior & Community Center and WILSONVILLE Senior Center). The city has communicated to NCPRD an openness to continue using the site for these and related services. If the services are not provided at this site, the County would need to find an alternative location in this general area to provide these services.

Youth and recreational programs are different. Those services are funded primarily using property tax and fees collected by individual and team users. Many of these services are provided on constructed fields using contracted fields and North Clackamas Park, as well as at the Aquatic Center. A limited number utilize facilities within the Milwaukie Community Center. The city is currently in conversations with NCPRD to see if there is a mutually beneficial partnership that would allow residents their current or similar access, using the revenue collected by NCPRD at our sites to offset costs and those services.

Cost to operate and maintain

City staff conducted several budget analyses to determine operational and maintenance costs for parks. Using several sources of data, discussions with other park providers and some reasonable assumptions, Milwaukie staff developed estimates for park operation and maintenance. Preliminary estimates using the methodology developed by the consulting firm ECONorthwest for the Oak Lodge Governance Project suggested that the \$1,271,000 Milwaukie would receive from a similar property tax would be sufficient for our initial operations, maintenance, and programming.

Using these as a starting point, staff developed a preliminary budget and six-year forecast for parks operations and maintenance. With the addition of the current parks development coordinator personnel costs reflected as a transfer to a “parks” fund, and funding from the Marine Board for dock removal this increased projected funding to \$1,445,000 in FY 23/24. The estimated operating expenses include personnel costs, contract services (landscaping and janitorial), professional services, repair and maintenance costs and transfers. The budget does not include programming costs, based on the paragraphs above in which the city would negotiate programming services to be provided by NCPRD. The table below forecasts revenues, O&M expenses and positive income through FY 2027. Staff is refining the budget forecast to also include projected capital expenses and the dedicated capital funding sources for current and future park projects.

	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Total Operating Revenues	\$ 1,455,155	\$1,501,273	\$1,548,672	\$1,596,479	\$1,646,490	\$1,697,639
Total Operating Expenses	\$1,373,167	\$1,430,055	\$1,466,349	\$1,547,344	\$1,633,350	\$1,724,704
Operating Income	\$ 81,988	\$71,218	\$82,323	\$49,135	\$13,139	-\$27,065
Cash Forward Beginning Year	0	\$81,988	\$153,206	\$235,529	\$284,664	\$297,803
Balance	\$ 81,988	\$153,206	\$235,529	\$284,664	\$297,803	\$270,738

Funding Mechanisms

To determine a department’s viability, city staff also investigated current funding sources and the associated processes to gain revenues.

Property Tax

60 percent of the funds NCPRD uses to pay for operating the parks and recreation services is derived from property taxes. NCPRD receives a property tax within the district of \$0.5382 per \$1,000 of assessed valued. Based on the average home taxable value in Milwaukie, that equates to \$108 per year in property tax. Should the city be interested in levying that rate on our taxpayers in place of NCPRD, the city will need to place a five-year levy request on the ballot and our voters will need to approve the rate. Collection of the rate by NCPRD would be discontinued at the time a city levy was collected, assuring that Milwaukians are not double charged.

Fee Based Financing

Neither NCPRD, nor the city currently utilize a monthly fee to fund parks and recreation services. However, as an alternative to a levy, the Council could consider the establishment of a parks fee. A parks utility fund could be setup as a special revenue fund that is used for maintenance and operation of city parks, trails, and green-spaces. This fee treats park services more like a utility. Several communities in Oregon have a parks fee, including West Linn, Tualatin, Tigard and Gresham. The revenue generated from these fees in these communities are generally allocated for parks maintenance, although in some instances communities have used the fee to pay for debt service on capital programs. A Parks utility fee would be charged to all utility customers and could include low-income assistance to eligible customers. The fee would also generate revenue from parcels that may be tax exempt

The table below provides a preliminary comparison for discussion purposes between a levy and a potential utility fee.

	Estimated Parks Levy vs Fee				
	FY23/24	FY 24/25	FY 25/26	FY 26/27	FY 27/28
Annual Levy Proceeds	\$1,271,000	\$1,309,000	\$1,349,000	\$1,389,000	\$1,431,000
Levy amount for Average Assessed Value (annual basis)	\$108	\$111	\$114	\$118	\$121
Levy amount for Average Assessed Value (monthly basis)	\$8.97	\$9.24	\$9.51	\$9.80	\$10.09
Levy amount for Highest Assessed Value (monthly basis)	\$2,272.29	\$2,340.46	\$2,410.68	\$2,483.00	\$2,557.49
Parks Fee Based on Utility Account (monthly basis)	\$15.46	\$15.92	\$16.41	\$16.90	\$17.41
Parks Fee Residential with Employee Fee (monthly basis)	\$8.00	\$8.24	\$8.49	\$8.74	\$9.00
Parks Fee Large Commercial/ Industrial with Employee Fee (monthly Basis)	\$2,901.44	\$2,988.48	\$3,078.14	\$3,170.48	\$3,265.60

Fees

A significant portion of NCPRD's budget is collected through user fees. These fees are primarily collected through services provided at North Clackamas Park, the Milwaukie Community Center and the Aquatic Center. Should the city leave NCPRD, the city could choose to continue to provide services at North Clackamas Park and the Milwaukie Community Center. Alternatively, the city and NCPRD could partner as discussed above in the "Programming" section of this report, with those funds being used to offset city resident's participation in NCPRD programming including pool access and recreational teams and classes. It is expected that in such a five-year scenario, NCPRD would retain collected fees to provide those services to our resident.

Grants

Over the past 15 years, most capital/construction dollars used to develop park amenities within the city have been secured through grants and earmarks secured by the city. Most recently, the city was provided \$2.25 million in funding through Oregon's portion of the American Rescue Plan Act (ARPA) of 2021. These funds were allotted to the state's senators and representatives. Senator Kathleen Taylor and Representative Karin Power each requested that a portion of their district funds be allocated towards the improvement and development of neighborhood parks. City staff will continue to apply for grants and earmarks in a similar fashion, whether or not the city leaves NCPRD.

SDCs

System Development Charges (SDCs) are one-time charges assessed on new development, additions and changes of use to pay for the costs of expanding public facilities. Growth creates additional infrastructure demands. SDCs provide a mechanism to fund new growth in a community along with the related demand placed on storm and sanitary sewer systems, parks and recreation facilities, water and street systems. Specific to parks, these funds are collected to

assure that there are sufficient park amenities for our growing community and can provide a significant amount of funding towards the development of new park services.

Currently, the city collects the park SDCs when other SDCs are collected for our utilities. However, the park SDCs are immediately transferred to NCPRD. A significant increase in the development occurring throughout the city has led to more SDCs being collected for parks over the past year. This past fiscal year, the city collected and transferred \$1.1 million in SDCs. If the city were to stay in NCPRD and collect SDCs at their current rate, we expect we would collect \$3.255 million in the coming three years.

Should the city council decide to proceed with leaving the district and/or place the levy on the ballot for community support, the city will need to engage with a consultant team to develop an interim Parks SDC methodology for the city. This interim or transitional methodology will allow for the city to engage in a robust engagement and master planning effort with community on parks at a future date and still capture parks SDC revenues. This methodology will be based on the capital project list developed from existing NCPRD documentation and modified with input from city staff. The work will include discussion of key policy choices that will frame the resulting SDC and SDC structure, within the constraints provided by Oregon SDC statutes and clarifying case law. The effort will ultimately result in a defensible Park SDC and supporting documentation and calculations. The SDC analysis will include both a reimbursement fee (as applicable) and an improvement fee. Upon completion of the master planning effort, the city will review the interim SDC methodology and update based on the outcomes of the master planning effort.

Because SDCs are a critical part of funding future parks and due to comments made at recent DAC meetings, council may want to consider revoking a resolution approved by the council on April 3, 2018. That resolution endorsed the process of eliminating zones, which could lead to city generated SDCs being spent in unincorporated county.

Milwaukie Bay Park Funding

Milwaukie Bay Park has been a long sought-after project in the Milwaukie downtown core. Currently, the staff of NCPRD have included a proposal for full funding to construct Milwaukie Bay Park. However, the County Commission refuses to use such funds unless the city makes concessions in the overarching IGA. In the initial draft, those changes include forgoing the city's long standing right to leave the district with a simple vote of the council. This would permanently lock the city into its relationship with NCPRD without an ability for recourse when the district does not provide deferred maintenance at existing sites or construct new parks, even as the district collects all the revenues from our residents to do so.

Should the city leave the district, the city will be solely responsible for funding the park improvements. Currently, the budget for construction sits at \$7.869 million with an additional \$1.5 in contingency and soft costs for a total of \$9.369 million. The city currently has allocated \$250,000 in General Fund, \$750,000 in Metro grant funding, and \$600,000 in Urban Renewal funding. Staff at NCPRD have secured approximately \$1,796,125 in project specific grants that the city would request remain in the project. Further, the district has approximately \$1.5 million in SDCs collected within the city boundaries and an additional \$3.255 million in SDCs are expected over the coming couple years. Should all of those funds be secured and applicable to this project, that would leave the city with \$8.151 million and a shortfall of approximately \$1.218 million. Staff cannot guarantee full construction of the park without identifying and securing all

the associated funds. However, staff does believe that a Phase 3 could be completed, at least partially, with available funds.

Council Questions

Should the Council want to leave NCPRD at a future date, the city would need a dedicated funding source. Staff recommends, as the current funding is derived from property taxes, a similar tax should be its replacement. To levy that tax, the city would need to place the levy on the ballot for consideration by the voters of Milwaukie.

- 1) Would council like to proceed with the levy (\$.5382 per \$1000 in assessed value)?
- 2) Further, would council be interested in a resolution rescinding the 2018 SDC resolution?

BUDGET IMPACT

Proceeding with a city parks levy would generate over \$1.2 million in revenues. Creating the fund would also require a budget adjustment to move existing park funding to a combined account.

COORDINATION, CONCURRENCE, OR DISSENT

This staff report has been developed in partnership with the city attorney, Public Works, and Strategic Engagement Team.

ALTERNATIVES

City Council could choose not to proceed with a levy or could choose to develop a fee, similar to a utility fee at the time members determined the city's future involvement in NCPRD.

ATTACHMENTS

1. NCPRD – City of Milwaukie Master IGA
2. May 19, 2022 Letter – Mr. Jeffry Munns

Amendment #1

**2008 Cooperative Intergovernmental Agreement
Between City of Milwaukie and North Clackamas
Parks and Recreation District**

1) The District shall maintain the areas of the Parks listed below as described in this amendment:

Riverfront Park - from McLoughlin Blvd to the River and between southern edge of Log dump property and Johnson Creek) -- NOTE: Parking strip on west side of McLoughlin and lawn area adjacent must be maintained at a high level. All other areas can be moderate to low -- unless there is a specific need or event preparation. As the Park or portions of the Park are improved, a high maintenance level will be applied to the improved portion(s). (The median strip in the center of McLoughlin Blvd will be maintained by the City of Milwaukie.)

Scott Park -- from north edge of sidewalk along north end of library building. Includes natural area within split rail fence but excludes pond. City covers lawn area south of Library and front landscape

40th and Harvey -- NCP areas only (NCP will maintain the grounds inside its fenced shop area including beds next to building. NCP will maintain the grounds inside the entire fenced area where the NCP vehicles are parked. NCP will maintain the unfenced grounds from the access road on the south of the building to the south property line and up to the west edge of the sidewalk on the east in front of the NCP shop.

Robert Kronberg Park (including City-owned parcels to north and south)

2) "Minthorne North" shall be added to Attachment #1, under the header:

A. Milwaukie Parks to Be Maintained and Operated by the Service District

3) "Minthorne North" shall also be added to the list of sites in Attachment #2, listed under the header: "Natural Resource Areas"

City of Milwaukie

By:
Date:

North Clackamas Parks
And Recreation District

By: Lynn Peterson, Chair
Date: 1-21-2010 ~~III~~, 1.

10/28/2008

COOPERATIVE INTERGOVERNMENTAL AGREEMENT

This Cooperative Intergovernmental Agreement (this "Agreement"), made this 21st day of October 2008, is entered by and between North Clackamas Parks and Recreation District, a county service district formed under ORS Chapter 451 hereinafter referred to as "District," and the City of Milwaukie, hereinafter referred to as "City," pursuant to the provisions of the Intergovernmental Cooperation Act, ORS 190.003-190.250.

WHEREAS, City is part of the District; and

WHEREAS, the District provides park services for the benefit of City residents; and

WHEREAS, the parties desire to revise that certain intergovernmental agreement dated August 20, 1992 to better clarify the roles and relationship of the parties regarding the provision of park and recreation services; and

WHEREAS, when the District was established in 1990 by a vote of the Clackamas County residents, the District agreed to acquire land and develop regional parks and recreation facilities for the North Clackamas area including:

- A State-of-the Art Aquatics Complex;
- 4 Lighted Softball Fields;
- 2 Lighted Soccer Fields;
- 2 Multi-purpose fields;
- 1 Riverfront Park in Oak Grove;
- Approximately 75 Acres of Natural Areas;
- Walking Trails Linking North Clackamas Park, the Southern Pacific Property (now called North Clackamas District Park), and Mount Talbert; and

WHEREAS, the City maintained and operated the Milwaukie Center through August 31, 1992; and

WHEREAS, during the fiscal year 1991-92, the District provided the City of Milwaukie with the funding to maintain and operate the Milwaukie Center; and

WHEREAS, this "pass-through" of funding was equivalent at a minimum to the 1990 City of Milwaukie budget allocation for the Milwaukie Center (\$165,955) plus a 6% annual increase for inflation. Upon transition the Milwaukie Center's budget increased each year by at least 6% per year until June 30, 1995; and

WHEREAS, the District also provided the Milwaukie Center's budget with an additional funding of \$98,000 to maintain and operate the Milwaukie Center upon completion of the Center's expansion by the City of Milwaukie. Subsequently, this sum was increased annually by at least 6% per year until June 30, 1995; and

WHEREAS, as of September 1, 1992, the City transferred maintenance and operations responsibility of the Milwaukie Center to the District and the District assumed responsibility for the maintenance and operation of the Milwaukie Center; and

WHEREAS, upon assuming maintenance and operation of the Milwaukie Center, the District accepted and assigned employees for the Milwaukie Center staff in accordance with ORS 236 under which employees were to perform to District standards and abide by District personnel regulations; and

WHEREAS, at the time of transfer (September 1, 1992) all Milwaukie Center policies developed by the Milwaukie Center Community Advisory Board ("C/CAB") were adopted by the District. This Board continues its role as primary policy advisor with regards to the activities and operations of the Milwaukie Center; and

WHEREAS, The Board of County Commissioners is the governing body (referred herein as the "BCC") of the District.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein, the City and District hereby agree:

I. PARKS CAPITAL IMPROVEMENTS

A. DISTRICT

- 1) While the City continues to support the development of the parks and recreation facilities listed here it acknowledges that parks and recreation facility development priorities continue to grow and change. To this end, the District shall coordinate closely with City staff and its citizens when developing its annual budget, its capital improvement plan, when amending and reviewing its master plan and modifying its System Development Charges ("SDC"). Notices of all District Advisory Board (or subcommittees thereof) or BCC meetings pertaining to the District's budget, Capital Improvement Plan, Master Plan or SDC changes will be sent to the City Manager or his or her designee.
- 2) The District may undertake improvements to parks owned by the City. These improvements are subject to the approval of the Milwaukie City Council, or its designee.

B. CITY

- 1) The City will retain the deeds to all parks and facilities owned by the City and operated and maintained by the District as listed in Attachment #1 ("Joint Parks").

All proposed name changes to parks and facilities within the City of Milwaukie will be reviewed according to the City's naming policy.

All parks and facilities owned by the City, but maintained and operated by the District, will have signage explaining this dual relationship. Signs within these parks shall state: "This park owned by the City of Milwaukie and maintained by the North Clackamas Parks and Recreation District."

- 2) The City may, at any time, construct new parks or make improvements to parks currently under its jurisdiction. These improvements will be at the City's own expense unless the District agrees to provide funding for these improvements. The District shall have no obligation to maintain or operate such parks unless otherwise agreed in writing. City staff will coordinate with District staff on any proposed park modifications to ensure ease of maintenance and operation.
- 3) For any parks other than Joint Parks, the City and the District will negotiate a level of service to be provided and any additional compensation owed by the City to the District. In those cases where the District denies the City's request to enhance, operate or maintain parks or facilities, the City will have the exclusive right to the option to enhance, maintain and operate these facilities at the City's own expense.
- 4) The City's requests for District enhancement, maintenance or operation of new City facilities will be made in writing and addressed to the Director of the District. The District Director shall review the request with the District Advisory Board ("DAB") and respond to the City with a decision within two months of the City's request.

II. MAINTENANCE OF PARKS FACILITIES

A. DISTRICT

- 1) The District will maintain and operate all Joint Parks.
- 2) The District will maintain all Joint Parks at a level equal to or better than the Milwaukie maintenance standards as set forth on Attachment #2.
- 3) Joint Parks may be shifted among maintenance standard levels at the mutual agreement of the City and the District.

B. CITY

- 1) City shall maintain all parks owned by the City unless otherwise agreed to herein.

III. RECREATIONAL PROGRAMMING

A. DISTRICT

- 1) The District will provide aquatics and recreational programming including programs for all ages and differing abilities, coordination and scheduling of fields services, and summer youth recreation programs for the entire North Clackamas area.
- 2) Except for North Clackamas Park (and the Milwaukie Center), use of all City parks and recreation facilities will be on a first come, first served basis. The District will be responsible for scheduling and management of all North Clackamas Park and Milwaukie Center facilities.

B. CITY

- 1) The City may provide recreation programs in addition to those provided by the District. These programs will be at the City's own expense and will not be covered by District funds. The City will coordinate its recreational programs with the District in order to avoid scheduling or service conflicts.

IV. MILWAUKIE CENTER

A. DISTRICT

- 1) Under the jurisdiction of the District, the Milwaukie Center continues to administer and provide a combination of educational, recreational, and social services to the community. These programs shall be primarily geared towards the needs and interests of older residents in the North Clackamas area.

B. JOINTLY, CITY AND THE DISTRICT

- 1) The District and the City may use the Milwaukie Center facilities for such activities as public meetings consistent with building policies. All other governmental users will pay a fee consistent with building use policies approved by the BCC.
- 2) From September 1, 1992 to October 2008, half (9) of the C/CAB members were appointed by the BCC and half (9) were appointed by the Milwaukie City Council.
- 3) Effective on the signing of this agreement, the C/CAB will reorganize and consist of a minimum of twelve (12) members who live or work within the District boundaries.

Of the twelve C/CAB members, there will be representation of one member each appointed by the City and the City of Happy Valley. The C/CAB and DAB and agree to recommend to the BCC for approval the individuals nominated by the City and City of Happy Valley city councils to fill the City representative seats. The BCC agrees to appoint the individuals nominated by the city councils unless there is good cause for rejecting the nomination. All other C/CAB applications for any of the remaining at-large board positions may be made directly to the C/CAB.

The C/CAB members will be recommended by the C/CAB and DAB and appointed by the BCC. C/CAB members will be appointed to staggered three-year terms with terms ending in October of each year. Current members will continue to serve until their term ends.

- 4) During the annual budget process the C/CAB will provide budget recommendations for the operation and maintenance of the Milwaukie Center, and in addition, the C/CAB will identify and prioritize necessary capital projects and provide project recommendations to the DAB. The recommendations for maintenance and operations, and capital improvements shall be reviewed by the DAB, who will then forward their recommendations to the District Budget Committee. The Budget Committee will then submit recommendations to the BCC for final decision.
- 5) The City will continue to retain the deed to the Milwaukie Center and all name changes made by the District to parks and facilities within the City must be approved by the City Council, under advisement of the C/CAB.

V. ADMINISTRATIVE ISSUES

A. DISTRICT ADVISORY BOARD

- 1) The DAB currently consists of an eleven-member board with representation allocated as follows:
 - 3 members from east of I-205 (one of which may reside in the City of Happy Valley), with one member term expiring in 2009;
 - 3 members from west of I-205 (one of which may reside in the City of Milwaukie), with one member term expiring in 2009;
 - 1 member from the City of Happy Valley;
 - 1 member from the City of Milwaukie;
 - 1 member from the Milwaukie Center; and
 - 2 members at large (one from east of I-205 and one from west of I-205).
- 2) District agrees to appoint the individual nominated by the City Councils to fill the City's representative seat unless there is good cause for rejecting the nomination.
- 3) DAB composition will be revisited and adjusted, in the event of significant District boundary changes or major population changes.
- 4) DAB members will be appointed to staggered four-year terms and may be removed at will by the BCC.
- 5) Effective July 1, 2009, representation on the DAB shall change to a nine member board. As of July 1, 2009, composition will include two members each from east and west of I-205, one member from the City of Happy Valley, one member from

the City of Milwaukie, one member from the Milwaukie Center and two members at large (one from east of I-205 and one from west of I-205).

- 6) Any subsequent substantive changes to the composition of the DAB will be reviewed by the City Council.

B. The District Director or their designee will provide the City Council with an annual report describing District operations and maintenance of facilities and programs within the City.

VI. REMOVAL OF CITY PARKS AND RECREATION FACILITIES FROM DISTRICT MAINTENANCE RESPONSIBILITY

- 1) The City may choose at any time to remove some or all of the Joint Parks or the Milwaukie Center from the District's maintenance responsibility.

If the City removes one or more of the Joint Parks and/or senior facilities, no reduction in the District tax rate will be provided to City residents. City residents will continue to receive all of the benefits of in-District residents (e.g., lower user fees, priority use of facilities). Further, District residents will continue to receive all of the benefits (e.g., scheduling, priority use of facilities, equal or lower fees) of the removed facilities and will be treated equally with residents of the City.

- 2) If the City chooses to remove those parks currently under its jurisdiction and/or the Milwaukie Center, a pass-through regarding operations and maintenance support will be negotiated at that time.
- 3) Employees of the District primarily responsible for the operations or maintenance of these facilities will be transferred to the City per ORS 236. Contracts entered into by the District for operations and maintenance support for the subject facilities will be assigned, either in part or in whole depending on the scope of project, to the City for the remainder of the contract term. The Parties agree to enter into any additional agreements or documents necessary to effectuate such transfers and/or assignments.
- 4) The City may choose at any time to withdraw entirely from the District pursuant to ORS 222.524 or its successor statute.

VII. ADDITIONAL PROVISIONS

A. HOLD HARMLESS

Each party agrees to release, defend, indemnify and/or hold harmless the other, its officers, commissioners, councilors, employees, and agents from and against all damages, claims, injuries, costs or judgments which may in any manner arise as a result of such party's performance under this Agreement, subject to Oregon Tort claims limitations.

B. DISPUTES

- 1) Disputes/Attorney Fees. If a dispute arises between the parties regarding breach of this Agreement or interpretation of any term of this Agreement, the parties shall first attempt to resolve the dispute by negotiation followed by mediation if negotiation fails to resolve the dispute.
 - a) Step One. The City Manager and the District Director, or other persons designated by the governing bodies, will negotiate on behalf of the entities they represent. The nature of the dispute shall be reduced to writing and shall be presented to each representative who shall then meet and attempt to resolve the issue. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each party's representative and ratified by each governing body, which shall be binding upon the parties.
 - b) Step Two. If the dispute cannot be resolved within ten (10) days at step one, the parties shall submit the matter to non-binding mediation. The parties shall attempt to agree on a mediator. If they cannot agree, the parties shall request a list of five potential mediators from an entity or firm providing mediation services that is mutually acceptable to the parties. The parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree, the parties shall submit the matter to the Presiding Court of Clackamas County and the Presiding Judge shall appoint such a mediator from the list of mediators submitted by the mediation entity or firm. The mediator's fees shall be borne equally by the parties and the parties shall each bear their own costs, attorney fees and fees associated with the mediation. If the issue is resolved at this step, a written determination of such resolution shall be signed by each representative and approved by the respective governing body.

C. GOVERNING LAWS

This Agreement shall be construed and governed in all respects in accordance with laws of the State of Oregon without giving effect to the conflict of law provisions thereof.

D. SEVERABILITY

Should any portion of this Agreement or amendment thereto be adjudged by a Court of appropriate final jurisdiction to be in violation of any local, state or federal law, then such portion or portions shall become null and void, and the balance of this Agreement shall remain in effect. Both parties agree to immediately renegotiate any part of this Agreement found to be in such violation by the Court and to bring it into compliance with said laws.

E. NOTICES

All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To the City: City Manager
 10722 SE Main Street
 Milwaukie, OR 97222

To the District District Director
 150 Beaver Creek Road
 Oregon City, Oregon 97045

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended.

F. TERM

This Agreement shall remain in effect to the end of the fiscal year in which both parties have signed and will be automatically renewed for successive one (1) year periods effective on July 1 of each year unless written notice of cancellation is given by either party to the other at least 180 days prior to the beginning of the next fiscal year.

G. REVIEW

Formal review of this Agreement shall take place either:

- 1) At any time during the term of this Agreement, at the request of either party the Agreement may be formally reviewed by either or both parties and amended as agreed;
- 2) Beginning on July 1 of 2013, and each five years after that date, the City will formally review the IGA and meet with the DAB to discuss potential amendments; or
- 3) At such time as the District Master Plan is amended, the City will review the IGA and propose amendments to the District within one year of the effective date of the amended master plan.

H. CONSTITUTIONAL LIMITS

This Agreement is subject to any applicable constitutional debt limitations and is contingent upon funds being appropriated thereof.

I. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and supersedes any and all other agreements, written or oral, expressed or implied, pertaining to the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by the duly authorized officers on the dates hereinafter written.

CITY OF MILWAUKIE

Pat Duval / AIC

By: Pat Duval

Date: 10/28/08

NORTH CLACKAMAS PARKS AND
RECREATION DISTRICT

Lynn Peterson

By: Lynn Peterson

Date: December 18, 2008

ATTACHMENT #1

A. MILWAUKIE PARKS TO BE MAINTAINED AND OPERATED BY THE SERVICE DISTRICT

SITE

Ardenwald Park
Jefferson Street Boat Ramp
Spring Park (enhanced)
Stanley Park (excluding well site)
Century Park
Water Tower Park (excluding well site and water tank)
Furnberg Park
North Clackamas Park
Dogwood Park
Wichita Park
Scott Park
Robert Kronberg Park (enhanced)
40th and Harvey – NCP areas only
Lewelling Community Park
Homewood Park
Riverfront Park (enhanced)
Balfour Property (local share 2008)
Lake Rd Property (local share 2008)
Monroe Street Triangle (at 37th Ave)

B. MILWAUKIE OPEN SPACES TO BE MAINTAINED AND OPERATED BY THE CITY OF MILWAUKIE

Old Shop (40th & Harvey)
City Hall Grounds and Parking Lot
Well #8
New Century Player/Historic Society Building
Stanley Well area behind fence
Monroe/Washington Triangles
Water Tower Well areas behind fences and access road

If the City of Milwaukie so chooses, it may contract with the District to maintain some or all of the facilities listed above in Section B. If the City contracts with the District to maintain a facility listed in Section B, the District will charge the City a fee that will allow the District to cover (but not exceed) its maintenance costs.

ATTACHMENT #2

Park Maintenance Standards City of Milwaukie

The Milwaukie Parks facilities are divided into several categories. The categories include: High Maintenance, Moderate Maintenance, Basic Maintenance, Special Use Facilities, Infrastructure and Natural Resource Maintenance.

HIGH MAINTENANCE AREAS

High Maintenance Areas include: Ardenwald Park, Dogwood Park, Lewelling Community Park, the Milwaukie Center, North Clackamas Park, Riverfront Park, Scott Park and Water Tower Park.

High Maintenance areas are those associated with City buildings, located in the downtown area, located at an entry point into the City or are high use areas. These areas are mowed a minimum of once per week, edged twice per month and fertilized two times per year. Tree rings and flowerbeds are edged with string trimmers bi-weekly. Broadleaf weeds will be treated as needed. Flower beds are weeded and sprayed as needed. Trash and litter will be picked up weekly. All high maintenance areas are irrigated. Irrigation will be programmed, maintained and winterized. Trees and shrubs will be pruned as needed. Leaves will be removed annually in the fall. Picnic tables, playground equipment and signage will be monitored and repaired. Fencing will be repaired as needed. Mowing in these areas should be performed March through November as weather permits.

MODERATE MAINTENANCE AREAS

Moderate Maintenance areas include: Century Park, Furnberg Park, Homewood Park, Stanley Park, and 40th Avenue Maintenance Area.

Moderate maintenance areas are typically neighborhood parks. These facilities are mowed an average of once a week, trimmed and edged with a weed-eater monthly. Fertilizers are not applied. Trash and litter is collected on a weekly basis. Playgrounds are inspected on a weekly basis. Herbicides are applied as needed. Picnic tables, playground equipment and signage will be monitored and repaired when needed. Mowing in these areas should be performed March through November as weather permits.

BASIC MAINTENANCE

Basic Maintenance areas include: Balfour St, Jefferson Street Boat Ramp, Lake Rd, Robert Kronberg Park, Spring Park, Wichita Park and Balfour St.

Basic maintenance includes weekly litter and trash removal. Mowing will occur twice

yearly. Restrooms will be cleaned and stocked weekly. Parking lot islands will be string trimmed as needed. Signage and picnic tables will be monitored and repaired as needed. Herbicides will be applied as needed. Mowing in these areas should be performed March through November as weather permits.

SPECIAL USE FACILITIES

Special use facilities: There are a variety of special use facilities. The facilities are treated differently based on the activities that occur within them. These facilities range from the Cemetery to the Boat Ramp. Pieces of larger facilities are included within this category. An example of this would be the horse arena at North Clackamas Park. Although North Clackamas Park is listed as a High maintenance area, many of its amenities fit within the special use category. For the purpose of establishing a standard, Special use facilities will be listed independently and defined separately.

Boat Ramp: The boat ramp is primarily a parking lot. It does have some planting area between the upper and lower lots which are kept clear of vegetation. The vegetation removal is done both manually and chemically. To the southern end of the parking lot is a small grass area. This area is mowed on an as-needed basis. Litter and garbage is collected twice a week during the non-fishing season and three times a week during fishing season. The heaviest use time for this facility is during the Spring Chinook run. During this time of year, the ramp area is patrolled on a daily basis for litter.

North Clackamas Park (NCP) Horse Arena: The horse arena at NCP is offered on both a reservation and drop in basis. The critical elements of the arena include the fencing and the footing. Footing is replaced on an ongoing basis. Fencing is repaired as needed.

NCP Ballfields: The Softball fields are mowed on a weekly basis. This begins in late March or early April. Lighting maintenance is performed on an annual basis when the ground is firm enough to support the needed truck. Historically, these facilities are fertilized annually.

NCP Picnic areas: The three picnic areas in NCP are rented on a daily basis beginning the week after May 1st through September 30th. The shelter tables are washed before every picnic.

INFRASTRUCTURE

Infrastructure: This heading includes such items as roads, irrigation, and restrooms.

Restrooms: There are ten restrooms. The first eight restrooms are located at NCP. These block-constructed restrooms are washed and sanitized using a mixture of chlorine bleach on a weekly basis. During days of scheduled events they are inspected at regularly scheduled intervals depending on the size and type of the event. The other two restrooms are all steel and are located at the boat ramp. These restrooms are

cleaned at least once per week. During high use time, such as the spring Chinook run, the restrooms are cleaned and inspected on a daily basis.

Sidewalks and Parking Lots: All debris is blown from sidewalks on a weekly basis. Parking lots and roadways are swept and repaired on an as needed basis by City of Milwaukie Public Works. The city street sweeper will sweep NCP and Milwaukie Center parking lots twice monthly.

NATURAL RESOURCE AREAS

Natural areas are found in the following City parks: Furnberg Park, Homewood Park, Spring Park, Kronberg Park, Dogwood Park, Scott Park, North Clackamas Park and Riverfront Park.

Natural areas are characterized as being largely undeveloped landscapes, with relatively intact ecosystem structure and functions, and used primarily for passive recreation. Natural areas are considered to have limited or minimal human disturbance and provide habitat for Lower Willamette Valley biotic communities in an urban setting.

The District will provide staff, organize volunteers or coordinate contract workers to enhance park ecosystems utilizing methods such as removing invasive and/or dangerous plants and trees, litter collection on an as-needed basis, replacing or planting native plants and clearing pathways in a manner fitting natural areas. The use of chemicals shall be minimized in these areas.

Where practical and safe, the District will consider the impacts of maintenance to natural cycles of succession, disturbance, and wildlife habitat needs. For example, dead or declining trees in a natural area may create opportunities for standing snags, nurse logs and brush piles. Aquatic features like pools or in stream woody debris are maintained even if doing so decreases drainage. Every effort should be taken to retain or increase available enhancement resources on a given site while maintaining a safe environment for the public.

Natural and sensitive areas shall be monitored for the following:

- Public use, such as high impact, vandalism, graffiti, or illegal activity
- Silt or debris loading and drainage of wetlands, ponds, and streams
- Presence of invasive plants
- Water quality and upstream impacts
- Dog or other pet impacts to turf, trails and wetlands

Natural areas are subject to litter and dumping activity. Park visitors are less likely to dump or litter if a site is clean and appears well maintained. Maintenance activities may discourage this activity through these routine tasks:

- Weekly to semi-monthly inspection of trailheads and street ends
- Quick response clean-up when incidents are reported
- Inspection of dumped materials to identify the perpetrator
- Prompt removal of encampments (Milwaukie Code Enforcement staff should be contacted to assist with this)



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

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May 19, 2022

Via email to GerickeJ@milwaukieoregon.gov

Mr. Justin Gericke
City Attorney
City of Milwaukie
10722 SE Mail St.
Milwaukie, OR 97222

Re: Withdrawal from NCPRD

Dear Justin:

We have received City Manager, Ann Ober's letter of May 18, 2022 to Michael Bork, Director of the North Clackamas Parks and Recreation District (NCPRD). This letter is written in the spirit of compromise pursuant to OEC 408. NCPRD respectfully disagrees that Section VI(4) of the current Cooperative Intergovernmental Agreement (IGA) is the proper method for the City to withdraw from NCPRD. We do agree to join the City in non-binding mediation. Who does the City request to serve as mediator?

NCPRD entered into this agreement in good faith and believed that ORS 222.524 was the appropriate method for the City to withdraw at the time, we have subsequently learned this statute does not apply to the present situation. This issue was litigated in the case, *Clackamas County Assessor, et al. v. City of Happy Valley*, Clackamas County Circuit Court Case No. 18CV30439. The Court found that ORS Chapter 222 does not apply to a situation where a city was annexed into a district.

The City of Milwaukie was not annexed to the district, it was included at the time of formation. However, the language of ORS 222.524 similarly does not apply to this situation. This statute only applies if authorized by ORS 222.520. That statute provides:

"Whenever a part less than the entire area of a district named in ORS 222.510 **becomes incorporated as or annexed to** a city in accordance with law and the city, **after the incorporation or annexation**, will provide for the service to the part of the district that the district provided before the incorporation or annexation, the city may cause the part to be withdrawn

from the district in the manner set forth in ORS 222.120 or at any time after the incorporation or annexation in the manner set forth in ORS 222.524.” ORS 222.520(1). (Emphases added.)

This statute contemplates a situation in which a city was wholly outside of a service district and then annexed property that was being served by the district. The city may then withdraw the territory from the district and provide the service. The statute also contemplates the situation in which previously unincorporated territory within a district incorporates, and the new city determines that it will provide the service and withdraws territory from the district.

Like the City of Happy Valley, the City of Milwaukie has neither annexed a portion of NCPRD, nor has it incorporated within NCPRD after district formation. In this situation the proper method for the City to withdraw from NCPRD is ORS 198.870. NCPRD is a County Service District formed under ORS Chapter 451. Boundary changes for a County Service District are governed by ORS Chapter 198. Pursuant to ORS 198.870 electors may present a Petition for withdrawal to the Board of County Commissioners for consideration.

I look forward to hearing from you with regards to your requested mediator. If NCPRD requests a different mediator we will forward names for your review promptly.

Very truly yours,



Jeffrey D. Munns
Assistant County Counsel

Mayor and Council,

Thank you for the countless hours you have given in service to our community.

After reading the editorial Mayor Batey wrote for the Clackamas Review regarding the insufficient tax rate of 54 cents per \$1000 of assessed tax value for the Parks District, we felt compelled to write to you about our concerns around parks issues. Formerly we both served as Chair of the Parks and Recreation Board (PARB) for the City of Milwaukie (eight years for each of us), and currently serve on the Milwaukie Parks Foundation. During the time we served on PARB we updated the tree code and achieved Tree City USA status for the City, formed the Tree Board and created its By-Laws, created the Parks Foundation, and served on the 2018 Steering Committee to update the Master Plan for Milwaukie Bay Park. Ensuring that the people of Milwaukie have parks and green spaces available to them is something we feel strongly about.

We have long felt that the current tax rate, which was set in 1990, is not sufficient to support both the maintenance and development of our parks. Currently we have a million-dollar backlog of maintenance for Milwaukie's parks. The City of Milwaukie has identified, acquired the land, and built the majority of its parks. Over the years we have been frustrated by the lack of maintenance upkeep and the stalling of the construction of Milwaukie Bay Park, among other things. We believe it's time to take a responsible approach to green infrastructure development by asking the citizens of Milwaukie to support a tax rate increase for the maintenance and development of our parks.

In closing, thank you for your consideration of this issue. We welcome any questions you have. In striving for a sustainable, equitable and healthy community we ask that you consider placing this before the voters.

Sincerely,

Lisa Lashbrook

Lisa Gunion-Rinker

COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Date Written: Aug. 2, 2023

Reviewed: Justin D. Gericke, City Attorney,
Joseph Briglio, Community Development Director, and
Toby LaFrance, Finance Director

From: Steve Adams, City Engineer

Subject: **Payment Authorization for Non-contracted Slurry Seal Improvements**

ACTION REQUESTED

Council is asked to adopt a resolution authorizing the city manager to approve payment totaling \$211,675.20 for the Street Surface Maintenance Program's (SSMP) 2023 slurry seal improvements project with Blackline Inc., for which work was performed without a contract or Council's prior authorization.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[June 7, 2022:](#) Council adopted the 2023-2028 Capital Improvement Plan (CIP) and the 2023-2024 biennial budget, which identified the slurry seal program as a CIP project.

December 2022: City of Hillsboro invites cities to participate in a joint procurement for the 2023 Pavement Management Program, including slurry seal improvements.

March 2023: City of Hillsboro issued a formal bid solicitation and the cities of Milwaukie, Beaverton, Gladstone, Oregon City, and Sherwood participated in joint procurement. Blackline Inc. was the lowest responsive and responsible bidder for slurry seal improvements, and each agency was instructed to enter into their own contract for their portion of the project.

April 2023: Engineering staff began discussing project scope and start dates with Blackline.

June 2023: Project work began without a contract in place or Council's authorization.

ANALYSIS

With the joint procurement for pavement management, each participating city was instructed through the solicitation documents and the notice of intent to award letter to contact Blackline and enter into their own contract for the portion of the project work within their jurisdiction.

For this year, engineering managed the entire slurry seal project; a lack of familiarity with how this joint project was handled in past years led to misunderstandings and subsequent mistakes. Engineering staff failed to complete this significant step and moved forward with the project work without a contract in place or Council's authorization.

By not entering into a contract, engineering staff failed to comply with certain city and state procurement requirements, including insurance and performance bond

requirements, and to secure Council's authorization to award the project totaling \$211,675.20. Project work is expected to be completed by mid-September.

The city engineer acknowledges the errors made and implications of not executing a contract for a public improvement and permitting Blackline to work without proper authorization. The finance department will notify the city's auditing firm of this procurement and Council authority violation. It is likely this violation will appear in the city's audit findings for the fiscal year that ended June 30, 2023.

Internal changes have been made to ensure an error like this does not occur again. First, all city departments will receive detailed procurement training provided by the accounting & contracts specialist so that all staff managing city projects understand procurement and authorization requirements. Second, all engineering contracts for city projects will be managed by the assistant city engineer from this point forward. In addition, engineering staff have written a lessons learned document including a check list on how to implement a slurry seal project with other agencies.

Because a contract authorizing the slurry seal improvement project was not executed, Council needs to authorize payment to Blackline for work that was already performed. Council's authorization is required as the solicitation and project work occurred prior to the recent increase in the city manager's delegated authority.

BUDGET IMPACT

None.

WORKLOAD IMPACT

None.

CLIMATE IMPACT

None.

COORDINATION, CONCURRENCE, OR DISSENT

Finance Director concurs with staff recommendation.

STAFF RECOMMENDATION

Staff recommends Council adopt a resolution authorizing the city manager to approve invoices totaling \$211,675.20 and pay Blackline for work performed.

ALTERNATIVES

None.

ATTACHMENTS

1. Resolution

COUNCIL RESOLUTION No.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, AUTHORIZING A PAYMENT OF \$211,675.20 TO BLACKLINE INC. FOR A STREET SURFACE MAINTENANCE PROGRAM (SSMP) SLURRY SEAL IMPROVEMENTS COMPLETED WITHOUT A CONTRACT.**

WHEREAS the city identified the SSMP slurry seal public improvement project in the 2023-2028 Capital Improvement Plan and 2023-2024 biennium budget, and

WHEREAS the city participated in a formal joint competitive bid procurement led by the City of Hillsboro, and

WHEREAS the city worked with the cities of Hillsboro, Sherwood, Oregon City, Gladstone, and Beaverton to develop plans and specifications to increase competition and improve pricing for pavement maintenance projects, and

WHEREAS Blackline was the lowest responsive and responsible bidder in the joint procurement effort for slurry seal improvements, and

WHEREAS each city participating in the joint procurement was instructed to enter into their own contract for the portion of the project within their jurisdiction, and

WHEREAS staff failed to enter into a contract for slurry seal improvements totaling \$211,675.20 and the contractor proceeded with and will complete project work without a contract in place, and

WHEREAS by not entering into a contract, staff failed to comply with certain city and state procurement requirements and did not obtain City Council's authorization, and

WHEREAS staff acknowledges the errors made in not executing a contract for slurry seal improvements and permitting the contractor to work without proper authorization, and

WHEREAS because a contract authorizing the slurry seal improvement project was not executed, Council needs to authorize payment to Blackline for work that was already performed, and

WHEREAS staff requests Council's authorization to pay Blackline the total amount due for work performed on the slurry seal improvement project.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the city manager, or their designee, is authorized to approve invoices from Blackline totaling \$211,675.20 for the 2023 slurry seal improvements and that the finance department is authorized to release such payment.

Introduced and adopted by the City Council on **August 15, 2023.**

This resolution is effective on **August 15, 2023.**

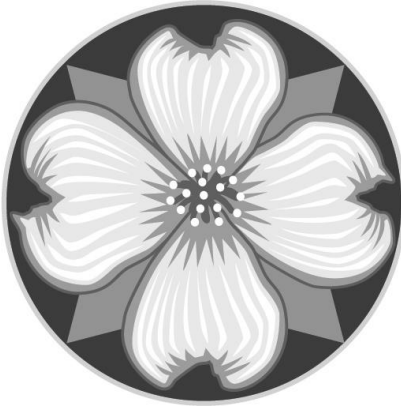
Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney



RS Agenda Item

8

Public Hearings

COUNCIL STAFF REPORT

To: City Council
Reviewed: Joseph Briglio, Community Development Director
From: Laura Weigel, Planning Manager
Brett Kelter, Senior Planner
Subject: **DLC Code Update**

Date Written: August 1, 2023

ACTION REQUESTED

Approve the proposed amendments to the municipal code that would officially retire the Design and Landmarks Committee (DLC) (land use file #ZA-2023-005).

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

August 16, 1976: Ordinance 1344 established design review regulations and a Design Review Board.

July 6, 1978: Ordinance 1397 repealed the design review program due to budgetary issues.

August 8, 1990: Resolution 27-1990 established the Historic Review Committee (HRC) to oversee newly adopted regulations for historic resources (November/December 1989).

May 18, 1993: Resolution 10-1993 changed the HRC from a committee to a commission, with decision-making authority concerning historic resources.

May 21, 1996: Ordinance 1799 changed the HRC from Historic Review Commission to Historic Resources Commission.

September 19, 2000: Ordinance 1880 adopted the Downtown Framework Plan and renamed the HRC as the Design and Landmarks Commission, responsible for both historic resource review and downtown design review.

October 5, 2004: Ordinance 1936 downgraded the DLC's status from a commission to a committee, with authority only to make recommendations to the Planning Commission.

[June 6, 2023:](#) Discussion with Council about amending the code to retire the DLC.

[July 25, 2023:](#) Planning Commission held a public hearing on the code amendments to retire the DLC.

ANALYSIS**The DLC today**

The DLC has played an important role over the past 20-plus years in setting the foundations of both downtown design review and historic resource protection. The DLC makes recommendations to the Planning Commission, which is the primary decision maker on downtown design and historic resource applications.

Currently the DLC is comprised of five members with a mix of backgrounds in architecture, design, and historic preservation. Until the COVID-19 pandemic hit in March 2020, the DLC met

regularly (usually the first Monday of each month) and spent much of the last six-plus years working on amendments to the downtown design review (DDR) portion of the municipal code (adopted by Council in March 2023 ([OR2226](#))). During that period, the committee also reviewed a handful of land use applications related to downtown design and historic resources (HR), making recommendations to the Commission.

For the past year, however, the prioritization of other projects to implement various aspects of the city's Comprehensive Plan (updated in 2020), state required code revisions, and the lack of a new long-range project for the DLC have effectively put the committee on hiatus. It is currently convening only when needed for application review (meeting only twice since August 2022). The next big project that could involve the DLC will be updating the historic resources inventory; however, that work is not scheduled to begin until at least 2025 based on other project schedules and staff capacity.

When the DLC was meeting every month pre-pandemic, a high level of staff time was required to manage the monthly meetings and the work associated with the committee. The staff liaison is responsible for creating the meeting agenda and preparing minutes, as well as completing the work coming out of the committee. Monthly management of this committee is very staff intensive.

Downtown design review

The recent updates to the DDR code were intended to provide more clarity and guidance for new building design. The new code has replaced the earlier guidelines that were much more diffuse and not as pointed about desired effects. The newly reshaped guidelines make it less critical to have the DLC as an advisory body and easier for the planning commission to be the primary reviewer when downtown projects require discretionary review. The enhanced clarity and specificity of the design standards also do more to influence building designs to match the preferences expressed by the community. The proposed designs for the most recent several downtown buildings have not required significant adjustments in response to local review.

On a few occasions over the past decade, developers have approached the DLC for an informal design review prior to submitting their application, seeking input from the group about their proposed design. Such preapplication meetings are not required by the code and they have not resulted in radical changes to plans, as projects are still usually far along in the design process by the time they are ready to be shared for even a preliminary review.

The volume of DDR applications is low, with only five applications needing discretionary review since 2017. In fact, in the 23 years that the DLC has participated in the DDR process, the DLC has reviewed only approximately 12 DDR applications (out of 50 total). For these few applications, DLC has provided relevant and insightful recommendation points for applicants and the Commission to consider. In a few cases, the DLC recommendations have resulted in the applicant making a small adjustment to the design or the Commission imposing a condition of approval. But the DLC's input, while clearly appreciated, has not been critically influential on many final decisions regarding design. Especially in light of the newly updated downtown design review code, the Commission is more than capable of handling those applications on its own.

Historic resources

The city's protections for historic resources are established in Milwaukie Municipal Code (MMC) Section 19.403. Interestingly, since 2004 the code offers no formal role to the DLC for historic resource issues. Proposals to alter or demolish a listed historic property, as well as to add or remove properties from the city's historic resources list, do not require input from the DLC.

However, staff has made it a practice to involve the DLC in the processing of historic resource applications that require discretionary review, having the committee provide recommendations to the Commission. In 33 years, the DLC has reviewed approximately 10 HR applications (out of 30 total). To be clear, the protections currently provided for historic resources do not depend on the DLC. The code is the driver in these decision-making processes. The Commission is already the sole party with an official role involving historic resources.

Milwaukie Historical Society comments (submitted to Planning Commission)

In advance of the Commission's public hearing to consider the proposed amendments on July 25, 2023, the Milwaukie Historical Society submitted comments in opposition. The historical society emphasized the importance of maintaining the DLC for purposes of keeping the city eligible for certified local government (CLG) status, which allows the city to seek certain types of funding for projects related to historic preservation and economic development downtown. The historical society pointed to the various goals and policies in the Comprehensive Plan related to Milwaukie's heritage and economic development and stressed the importance of the DLC in actualizing them. There was also an invitation to have the DLC participate in the historic resources inventory that the historical society is currently undertaking, as a way to keep the committee active.

Staff has confirmed that the DLC serves as an acceptable body for purposes of CLG status if the city were to decide to participate in that program and take advantage of the resources it offers. As noted above, an update to the city's historic resources code and inventory is forecast for initiation in two to five years. It is not clear whether the CLG program is one that the city will want to pursue, and it is not necessary or prudent to maintain the DLC until that project gets underway. As previously discussed by Council at its June 6 work session on this topic, there is a larger conversation to be had about historic preservation and the shape and form the community wants it to take. The DLC or a similar qualifying body can be (re)established at that point if necessary, with a clear mandate and dedicated resources at that time.

In the meantime, the Comprehensive Plan goals cited by the historical society are being addressed in one form or another by the existing code and programs in place. Without clear direction from Council to shift priorities to focus more on historic resources, there are no resources available to engage at the level the historical society advocates for. DLC members who wish to join the historical society's inventory effort are welcome to do that, but that project alone is not a reason to maintain the committee.

PC discussion and considerations

The Commission held a public hearing on the proposed amendments on [July 25, 2023](#), and voted 4-1 to recommend denial of the proposed amendments. A majority of the Commissioners expressed a sense of value for the DLC's role in downtown design review and thought the committee has an important role in actualizing the Comprehensive Plan goals and policies related to Milwaukie's heritage. Acknowledging that Council has given staff direction regarding priorities for implementing the updated Comprehensive Plan, the Commissioners seemed inclined to support a proposal to maintain the DLC on an ad hoc basis until the historic resource topic could be more actively addressed.

As noted above, pre-submittal design consultations are not common and not required in the current code. Staff believes that the updated code makes it easier for the planning commission to handle downtown design review without the credentialed expertise that the more narrowly focused DLC has provided over the years. And when it is time to engage the community in the

larger discussion of historic resources, people in the community with interest and expertise can be recruited to participate.

STAFF RECOMMENDATION

In consideration of the analysis and discussion presented above, staff recommends that Council approve the proposed amendments to retire the DLC and adopt the ordinance and findings in support of approval.

ALTERNATIVES

If Council chooses to not move forward with the proposed amendments to dissolve the DLC, staff has identified the following alternatives:

1. Retain the DLC and meet as needed

With a small adjustment to the committee's bylaws, the DLC could convene only when needed for a land use application (downtown design or historic resource). This arrangement would involve acceptance of the following:

- Meetings would be infrequent, making it harder to create a sense of group culture and cohesion.
- The DLC's active workplan would be limited to application review.
- Members would have to be versed in the code and prepared to review a downtown design or historic resource application when the occasion presents.
- Future recruitment efforts would need to set clear expectations about the group's limited operation and scope.

2. Retain the DLC and return to monthly meetings

The DLC could resume its regular schedule, with staff supporting monthly meetings and identifying a new long-range project for the group to tackle between downtown design and historic review applications. The most effective implementation of this alternative would involve Council shifting its goals to prioritize the DLC work over other planning projects.

BUDGET IMPACTS

Retiring the DLC will have no budgetary impacts.

WORKLOAD IMPACTS

The planning department has a long list of planning projects. Providing support for regular meetings of the DLC requires staff time and resources. Retiring the DLC will allow staff to concentrate their efforts on other projects—Comprehensive Plan implementation and others.

CLIMATE IMPACTS

The proposed amendments will have no direct impact on climate.

COORDINATION, CONCURRENCE, OR DISSENT

Staff discussed the proposal to retire the DLC with the committee members themselves. They accepted the rationale and acknowledged the challenges of supporting the group in the face of other priorities. However, they also lamented the loss of the opportunity to volunteer and play an advisory role for the Commission.

As discussed above, the Commission discussed the proposal in a public hearing and voted to recommend denial of the proposed amendments, citing the importance of the DLC as an advisor

on design and a body dedicated to the Comprehensive Plan policies related to Milwaukie's history and heritage.

ATTACHMENTS

1. Ordinance (revised, strikeout and clean versions)
 - Exhibit A. Findings in support of approval
 - Exhibit B. Code amendments (strikeout/underline format)
 - Exhibit C. Code amendments (clean format)
2. Public comments received (submitted to Council)

COUNCIL ORDINANCE No.**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING VARIOUS PARTS OF THE MUNICIPAL CODE (MMC) AS NECESSARY TO FORMALLY RETIRE THE DESIGN AND LANDMARKS COMMITTEE (DLC) (FILE #ZA-2023-005).**

WHEREAS the DLC was established to advise the Planning Commission on matters related to downtown design and historic preservation; and

WHEREAS the DLC has provided recommendations to the Planning Commission on applications for downtown design review and historic resource review and has been involved in a variety of special efforts related to downtown design and historic preservation; and

WHEREAS the DLC worked for several years on amendments to the downtown design review portion of the zoning code to facilitate the review process and ensure the code is delivering the quality of design the city desires, with the amendments adopted by City Council in March 2023; and

WHEREAS the volume of downtown design and historic resource applications needing DLC review has been low and infrequent over the past several decades, the Planning Commission has the capacity to evaluate those applications on its own, and there are no other long-range projects for the DLC on the near horizon; and

~~**WHEREAS** on July 25, 2023, the Planning Commission conducted a public hearing as required by MMC Subsection 19.1008.5 and adopted a motion in support of the proposed amendments; and~~

Note: Revised in light of the Planning Commission's motion on July 25 to recommend denial.

WHEREAS the 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 proposed amendments are adopted by the City Council and are attached as Exhibit A.

Section 2. Amendments. The MMC is amended as described in Exhibit B (strikeout/underline format) and Exhibit C (clean format).

Section 3. Effective Date. The amendments will become effective 30 days from the date of adoption.

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

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

Signed by the Mayor on _____.

Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

COUNCIL ORDINANCE No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING VARIOUS PARTS OF THE MUNICIPAL CODE (MMC) AS NECESSARY TO FORMALLY RETIRE THE DESIGN AND LANDMARKS COMMITTEE (DLC) (FILE #ZA-2023-005).

WHEREAS the DLC was established to advise the Planning Commission on matters related to downtown design and historic preservation; and

WHEREAS the DLC has provided recommendations to the Planning Commission on applications for downtown design review and historic resource review and has been involved in a variety of special efforts related to downtown design and historic preservation; and

WHEREAS the DLC worked for several years on amendments to the downtown design review portion of the zoning code to facilitate the review process and ensure the code is delivering the quality of design the city desires, with the amendments adopted by City Council in March 2023; and

WHEREAS the volume of downtown design and historic resource applications needing DLC review has been low and infrequent over the past several decades, the Planning Commission has the capacity to evaluate those applications on its own, and there are no other long-range projects for the DLC on the near horizon; and

WHEREAS the 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 proposed amendments are adopted by the City Council and are attached as Exhibit A.

Section 2. Amendments. The MMC is amended as described in Exhibit B (strikeout/underline format) and Exhibit C (clean format).

Section 3. Effective Date. The amendments will become effective 30 days from the date of adoption.

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

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

Signed by the Mayor on _____.

ATTEST:

Lisa M. Batey, Mayor
APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

EXHIBIT A
Recommended Findings in Support of Approval
File #ZA-2023-005
Code Amendments to Retire the Design and Landmarks Committee

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 the Milwaukie Municipal Code (MMC) to formally retire the Design and Landmarks Committee (DLC). Amendments are proposed to various sections of MMC Title 2 Administration and Personnel, MMC Title 14 Signs, and MMC Title 19 Zoning. The land use application file number is ZA-2023-005.
2. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Section 19.1008 Type V Review

The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. Public hearings were held on July 25, 2023, and August 15, 2023, as required by law.

3. MMC Section 19.902 Amendments to Maps and Ordinances

MMC 19.902 establishes the general process for amending the City's Comprehensive Plan and land use regulations within the municipal code. MMC Subsection 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:

- a. MMC Subsection 19.902.5.A requires that changes to the text of the land use regulations of the municipal code be evaluated through a Type V review per MMC Section 19.1008.

The Planning Commission held a duly advertised public hearing on July 25, 2023, and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on August 15, 2023, and approved the amendments. Public notice was provided in accordance with MMC Subsection 19.1008.3.

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

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

The proposed amendments are consistent with other provisions of the Milwaukie Municipal Code, including Title 2 Administration and Personnel, Title 14 Signs, and Title 19 Zoning.

This standard is met.

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

The following goals and policies of the Comprehensive Plan support the proposed amendments:

Section 2 – History, Arts, & Culture

Encourage and implement projects and programs that weave history, art, and culture into the fabric of the city, and that celebrate Milwaukie’s diversity and unique historic, archaeological, and cultural heritage.

Goal 2.1 – Milwaukie’s Heritage

Research, celebrate, document, and protect Milwaukie’s unique and diverse historic, archaeological, and cultural heritage.

Policy 2.1.1 – Work with local residents, businesses, and organizations to document and preserve Milwaukie’s diverse history.

Policy 2.1.4 – Provide educational materials and information regarding preservation to property owners and other interested persons and assist property owners in applying for designation as a locally significant historic resource.

Policy 2.1.7 – Maintain an official inventory of Milwaukie’s historic and cultural resources and regularly update the inventory as additional properties become eligible and are nominated for designation.

Policy 2.1.8 – Ensure that City processes for inventorying, altering, removing, or demolishing historic and cultural resources remain consistent with state and federal criteria as well as community priorities.

Policy 2.1.9 – Coordinate historic preservation activities with the Milwaukie Historical Society and the Oregon State Historic Preservation Office and follow all state and federal regulations for identifying and protecting archaeological resources.

Section 8 – Urban Design & Land Use

Promote the design of private development and public spaces and facilities to enhance community livability, environmental sustainability, social interaction, and multimodal connectivity and support the unique function of Milwaukie neighborhoods as the centers of daily life.

Goal 8.1 – Design

Use a design framework that considers location and development typology to guide urban design standards and procedures that are customized by zoning district.

Policy 8.1.1 – Downtown Milwaukie Policies

- f) Ensure that design standards and guidelines reflect a well-defined community vision for the downtown.

Goal 8.3 – Process

Provide a clear and straightforward design review process for development in Milwaukie along with incentives to achieve desired outcomes.

Policy 8.3.1 – Use a two-track development review process to ensure that new non-residential development and redevelopment projects are well designed. Provide a clear and objective set of standards as well as an optional, discretionary track that allows for greater design flexibility provided design objectives are satisfied.

Policy 8.3.2

Ensure that a clear and objective process is available for all housing types that meet design standards, provide adequate open space, and fit into the community, while offering an alternative discretionary path for projects that cannot meet these standards.

The proposed amendments do not diminish the Planning Commission's charge to implement the goals and policies of the comprehensive plan related to historic preservation and urban design. Even without the assistance of the DLC, staff and the Planning Commission will continue to be responsible for maintaining an inventory of Milwaukie's historic and cultural resources and coordinating activities with the Milwaukie Historical Society and other similar entities to ensure the City is following state and federal regulations for historic properties. These activities help educate the public about historic preservation. Staff and the Planning Commission will utilize the newly updated downtown design review process to ensure that new development and redevelopment projects provide the desired high quality of design.

This standard is met.

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

The proposed amendments are consistent with the Metro Urban Growth Management Functional Plan. A detailed analysis of the Functional Plan will be provided if requested.

This standard is met.

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

The proposed amendments are consistent with the following relevant statewide planning goals:

Goal 1 – Citizen Involvement

To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

The City has an adopted and acknowledged amendment process and has followed that process in making the proposed amendments. Public hearings on the proposed amendments have been held and public notice was published prior to each hearing. In addition, the Planning Commission members are appointed by an elected City Council, following an open and public selection process.

Goal 2 Land Use Planning

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The City's zoning code has an established process for reviewing land use applications related to downtown design and historic resources. The proposed amendments remove the DLC and its advisory role from those types of review but retain the Planning Commission as the primary decision maker and do not change the approval criteria for either review.

Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces

To protect natural resources and conserve scenic and historic areas and open spaces.

The City's zoning code includes protections for designated historic resources. The proposed amendments remove the DLC and its advisory role for that review but retain the Planning Commission as the primary decision maker and do not change the approval criteria.

This standard is met.

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

The proposed amendments are not inconsistent with any relevant federal regulations.

This standard is met.

The City Council finds that the proposed amendments to MMC Title 2 (Administration and Personnel), Title 14 (Signs), and Title 19 (Zoning) are consistent with the applicable approval criteria for zoning text amendments as established in MMC 19.902.5.B.

The City Council finds that the proposed zoning text amendments are approvable in accordance with the applicable procedures and standards of MMC 19.902.

4. MMC Section 19.1008 Type V Review

MMC 19.1008 establishes the procedures and requirements for Type V review, which is the process for legislative actions. The City Council, Planning Commission, Planning Manager, or any individual may initiate a Type V application.

The amendments were initiated by the Planning Manager on June 20, 2023.

- a. MMC Subsection 19.1008.3 establishes the public notice requirements for Type V review.

(1) MMC Subsection 19.1008.3.A General Public Notice

MMC 19.1008.3.A establishes the requirements for public notice.

- (a) MMC Subsection 19.1008.3.A.1 requires opportunity for public comment.

The City Council had a work session about the proposed code amendments on June 6, 2023. Proposed code amendments were first posted on the application webpage on June 20, 2023, and have been updated since as needed. On July 12, 2023, staff emailed Neighborhood District Association (NDA) leaders with information about the proposed amendments and a link to the July 25 Planning Commission meeting page.

- (b) MMC 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 July 25, 2023, hearing was posted as required on June 23, 2023. A notice of the City Council's August 15, 2023, hearing was posted as required on July 14, 2023.

- (c) MMC 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 proposed amendments apply to the existence of the DLC and its role in reviewing specific types of land use applications, so there is no direct impact to any specific property.

(2) MMC Subsection 19.1008.3.B DLCD Notice

MMC 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 provided to DLCD on June 20, 2023.

(3) MMC Subsection 19.1008.3.C Metro Notice

MMC Subsection 19.1008.3.C requires notice of a Type V application be sent to Metro 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to Metro on June 20, 2023.

(4) MMC Subsection 19.1008.3.D Property Owner Notice (Measure 56)

MMC 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 will not affect the permissible uses of land, they will effectively retire the DLC and remove its role from the downtown design and historic resource review processes. A Measure 56 notice is not relevant.

b. MMC Subsection 19.1008.4 Type V Decision Authority

MMC 19.1008.4 establishes that the City Council is the review authority for Type V applications and may approve, approve with conditions, amend, deny, or take no action on a Type V application after a public hearing.

The City Council held a public hearing to consider this application on August 15, 2023, and approved the proposed amendments as presented.

c. MMC Subsection 19.1008.5 Type V Recommendation and Decision

MMC 19.1008.5 establishes the procedures for review and a decision on Type V applications. The process includes an initial evidentiary hearing by the Planning Commission and a recommendation to the City Council, followed by a public hearing and decision by the City Council.

The Planning Commission held an initial evidentiary hearing on July 25, 2023, and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on August 15, 2023, and approved the proposed amendments as presented.

The City Council finds that the applicable requirements of MMC 19.1000 have been met.

Exhibit B

PROPOSED CODE AMENDMENTS RELATED TO RETIREMENT OF THE DESIGN AND LANDMARKS COMMITTEE (DLC)

(~~strikeout~~/underline version)

TITLE 2 ADMINISTRATION AND PERSONNEL

CHAPTER 2.10 BOARDS, COMMITTEES, AND COMMISSIONS GENERALLY

SECTION 2.10.010 APPLICABILITY

This chapter applies to all City boards, commissions, and committees unless mandated otherwise by State statute or City ordinance, including but not limited to the following boards, commissions, and committees:

- A. Budget Committee (ORS 294.336 and MMC 2.14, exclusive from monthly meetings);
- B. Center/Community Advisory Board (MMC 2.20 and IGA);
- C. Citizens Utility Advisory Board (MMC 2.11);
- ~~D. Design and Landmarks Committee (MMC 2.18);~~
- E.D. Library Board (ORS 357.400 to 357.621 and MMC 2.28);
- ~~F.E.~~ F. Park and Recreation Board (MMC 2.12);
- ~~G.F.~~ G. Planning Commission (ORS 227.010—227.030 and MMC 2.16);
- ~~H.G.~~ H. Public Safety Advisory Committee (MMC 2.24); and
- ~~I.H.~~ I. Milwaukie Arts Committee (MMC 2.17).

CHAPTER 2.16 PLANNING COMMISSION

SECTION 2.16.010 ESTABLISHED—PURPOSE

- ~~B. Coordination with the Design and Landmarks Committee~~

~~The Planning Commission shall meet at least twice annually with the Design and Landmarks Committee for reviewing prospective work program tasks related to urban design, architecture and design guidelines, historic preservation, and other areas of responsibility assigned to the Committee in Section 2.18.010.A.~~

CHAPTER 2.17 MILWAUKIE ARTS COMMITTEE

SECTION 2.17.010 ESTABLISHMENT

There is created a Milwaukie Arts Committee whose duties and responsibilities ~~shall be~~ are as follows:

- A. Support and promote the arts, artists, and art education within the Milwaukie area;
- B. Work cooperatively with other community groups and sources including, but not restricted to, Milwaukie's neighborhood district associations, ~~Design and Landmarks Committee~~, North Clackamas School District, North Clackamas Parks and Recreation District, Clackamas Arts Action Alliance, New Century Players, Portland Waldorf and other schools in and around

Milwaukie, Ledding Library, local businesses, area arts guilds and other groups already existing, or hereafter established, to promote the arts in the community.

CHAPTER 2.18 ~~DESIGN AND LANDMARKS COMMITTEE~~ *[reserve chapter number for future use]*

SECTION 2.18.010 ~~ESTABLISHED—PURPOSE, APPOINTMENT AND COMPOSITION, COORDINATION WITH PLANNING COMMISSION~~

A. ~~The Design and Landmarks Committee is established to advise the Planning Commission on all matters specified in Sections 2.16.010.A.9 through 2.16.010.A.12.~~

B. ~~Appointment and Composition~~

~~The Design and Landmarks Committee shall have five (5) members appointed by the City Council for two (2) year terms. The Council shall have discretion to reappoint or remove Committee members. One (1) Committee member shall have demonstrated special interest, experience, training, or knowledge in the field of historic preservation or history. One (1) Committee member shall have demonstrated special interest, experience, training, or knowledge in the field of architecture, planning, landscape design, or similar field.~~

C. ~~Annual Meetings~~

~~The Design and Landmarks Committee shall meet with the Planning Commission in accordance with Section 2.16.010.B.~~

D. ~~Review and recommend appropriate design guidelines and design review processes and procedures to the City Council.~~

E. ~~Any other duties assigned by the City Council.~~

TITLE 14 SIGNS

CHAPTER 14.04 GENERAL PROVISIONS

SECTION 14.04.030 DEFINITIONS

Sign, Nonconforming. “Nonconforming sign” means a sign that complied with applicable standards when created or modified but which does not comply with existing standards. Signs that did not require Planning Commission or ~~Design and Landmarks Committee~~ approval when created ~~shall~~ will not be considered nonconforming if approval from ~~these bodies~~ that body is currently required.

CHAPTER 14.16 SIGN DISTRICTS

SECTION 14.16.060 DOWNTOWN ZONES

H. Illumination

Illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.

2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs ~~shall~~ must not be internally illuminated. Features on an awning sign may be externally illuminated subject to review ~~by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings,~~ and approval by the Planning Commission, per Section 19.1006 Type III Review, according to the following criteria:
 - a. Sign lighting should be designed as an integral component of the building and sign composition.
 - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
 - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination ~~shall~~ must be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review ~~by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings,~~ and approval by the Planning Commission, per Section 19.1006 Type III Review, according to the following criteria:
 - a. The sign should be a unique design that responds to the ~~Milwaukee Downtown Design Guidelines~~ downtown design guidelines in Subsection 19.508.4.
 - b. The sign copy should be lighter than the sign background.
 - c. The sign background should use a predominance of dark color or be opaque when the light source is on.

CHAPTER 14.32 ADJUSTMENTS

SECTION 14.32.010 AUTHORIZATION TO GRANT OR DENY ADJUSTMENTS

- A. The Planning Commission may authorize adjustments to the requirements of this chapter per Section 19.1006 Type III Review where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this chapter would cause an undue or unnecessary hardship. The cost of meeting the standard ~~shall~~ will not be a basis for granting an adjustment. In granting an adjustment, the Planning Commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the City and otherwise achieve the purposes of this chapter.
- ~~B. The Design and Landmarks Committee shall hold a public meeting and prepare a report for adjustment applications that require Planning Commission review per Section 19.1011 Design Review Meetings. The Planning Commission shall consider the findings and recommendations contained in the report during the public hearing on the proposal.~~
- ~~C.~~ B. Adjustments may be granted where it can be shown that there are special and unusual circumstances related to the specific property or sign, the adjustment is consistent with the guiding principles of the ~~Downtown Design Guidelines~~ downtown design guidelines in Subsection 19.508.4, and the adjustment meets either of the following criteria:

1. Strict application of this chapter would cause an undue or unnecessary hardship. The cost of meeting the standard ~~shall~~ does not constitute a hardship; or
2. The adjustment serves to protect or enhance significant features such as, but not limited to, trees, historic or culturally significant buildings, or landmark signs.

In granting an adjustment, the Planning Commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the City and otherwise achieve the purposes of this chapter.

TITLE 19 ZONING

CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS

SECTION 19.401 WILLAMETTE GREENWAY ZONE WG

Subsection 19.401.6 Criteria

The following ~~shall~~ will be taken into account in the consideration of a conditional use:

- A. Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan;
- B. Compatibility with the scenic, natural, historic, economic, and recreational character of the river;
- C. Protection of views both toward and away from the river;
- D. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable;
- E. Public access to and along the river, to the greatest possible degree, by appropriate legal means;
- F. Emphasis on water-oriented and recreational uses;
- G. Maintain Maintenance of or increase in views between the Willamette River and downtown;
- H. Protection of the natural environment according to regulations in Section 19.402;
- ~~I. Advice and recommendations of the Design and Landmark Committee, as appropriate;~~
- ~~J. I.~~ Conformance to applicable Comprehensive Plan policies;
- ~~K. J.~~ The request is consistent with applicable plans and programs of the Division of State Lands;
- ~~L. K.~~ A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C.

CHAPTER 19.900 LAND USE APPLICATIONS

SECTION 19.907 DOWNTOWN DESIGN REVIEW

Subsection 19.907.3 Review Process

B. Review Types

To achieve the purpose of the downtown design standards and guidelines, there are three downtown design review processes through which to apply for approval:

1. Type I

The ministerial review track provides for a Type I review process pursuant to Section 19.1004 using the design standards in Section 19.508.

2. Type II

The administrative review track provides for a Type II process pursuant to Section 19.1005 that requires staff review utilizing the design standards and applicable guidelines in Section 19.508.

3. Type III

The discretionary review track provides for a Type III review process pursuant to Section 19.1006, through which the ~~Design and Landmarks Committee~~ and Planning Commission determines compliance with the downtown design guidelines in Section 19.508.

~~Subsection 19.907.6 Report and Recommendation by Design and Landmarks Committee~~

~~The Design and Landmarks Committee will hold a public meeting and prepare a downtown design review report for Type III applications pursuant to Section 19.1011. The Planning Commission shall consider the findings and recommendations contained in the downtown design review report during a public hearing on the proposal.~~

Subsection 19.907.76 Variances

- A. Variances cannot be granted for the downtown design standards of Section 19.508. Applications unable to meet one or more standards must meet the applicable downtown design guideline(s) in Subsection 19.508.4 instead and use the Type III discretionary downtown design review process.
- B. Variances can be granted for the downtown development standards of Section 19.304 unless otherwise specified, through the variance review process in Section 19.911.

SECTION 19.911 VARIANCES

Subsection 19.911.6 Building Height Variance in the Downtown Mixed Use Zone

C. Review Process

The building height variance ~~shall~~ will be subject to Type III review and approval by the ~~Design and Landmarks Committee~~ and the Planning Commission, in accordance with Chapter 19.907 and Section 19.1011. The building height variance ~~shall~~ will be consolidated with downtown design review.

- 1. Because the building height variance provides substantial flexibility and discretion, additional time ~~will~~ may be required for public input and technical evaluation of the proposal. To use this option, the applicant ~~shall~~ will sign a waiver of the 120-day decision requirement.
- 2. ~~The applicant may request design advice from the Design and Landmarks Committee prior to submitting an application. Design advice requests provide the opportunity to~~

~~assess approval potential prior to committing excessive time or money to detailed design plans.~~

- ~~3. Design advice requests may not be made for a specific project or site with an active land use review application.~~
- 4.2. A special application fee may be required to use this Type III option to allow the City to contract with a registered architect to assist in the review of the height variance application.

CHAPTER 19.1000 REVIEW PROCEDURES

SECTION 19.1005 TYPE II REVIEW

Subsection 19.1005.3 Type II Public Notice

A. Referral

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

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

SECTION 19.1006 TYPE III REVIEW

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

~~When the Design and Landmarks Committee is required to conduct a design review meeting for applications in the downtown zones per Section 19.907, the design review meeting shall be in addition to the public hearing before the Planning Commission. The procedures for a design review meeting are contained in Section 19.1011.~~

Subsection 19.1006.3 Type III Public Notice

C. Referral

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

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

SECTION 19.1007 TYPE IV REVIEW

Subsection 19.1007.3 Type IV Public Notice

C. Referral

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

1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 400 ft of the subject property.
- ~~2. The Design and Landmarks Committee for applications in downtown zones or involving a designated historic resource.~~
- 3.2. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

SECTION 19.1010 APPEALS

Subsection 19.1010.6 Specific Provisions for Appeal of a Type III Decision

- A. A Type III decision may be appealed by the applicant, applicant's representative, or any other person or organization who participated in the original decision by providing either testimony or evidence on the record leading to the decision by the review authority.
- B. At least 20 days prior to the appeal hearing, the City ~~shall~~ will mail written notice of the appeal hearing to all parties who were entitled to Type III public notice per Subsection 19.1006.3.D.1, interested persons, the appellant(s), and Planning Commission, ~~and Design and Landmarks Committee if they made a recommendation on the initial land use application.~~

~~SECTION 19.1011 DESIGN REVIEW MEETINGS~~

~~The Design and Landmarks Committee shall conduct a design review meeting when required by Section 19.907 for applications in the downtown zones. The meeting shall occur prior to the initial Planning Commission hearing on the application. Design review meetings provide an opportunity for the Design and Landmarks Committee to hear public comment, evaluate the proposal against relevant approval criteria, and vote on a recommendation to forward to the Planning Commission.~~

~~Subsection 19.1011.1 Responsibility of City for Design Review Meetings~~

~~The City shall:~~

- A. ~~Schedule land use applications for design review before the Design and Landmarks Committee at the earliest available scheduled meeting. If the Design and Landmarks Committee is unable to schedule a design review meeting with sufficient time for the Planning Commission to hold a public hearing in compliance with the 120-day decision requirement (or within 100 days for a project meeting all provisions of ORS 197.311), one of the following shall occur:~~
1. ~~The applicant may extend the 120-day decision requirement (or the 100-day decision requirement for a project meeting all provisions of ORS 197.311) per Subsection 19.1001.7.C in order to accommodate Design and Landmarks Committee review of the application.~~
 2. ~~If the applicant does not extend the 120-day decision requirement (or the 100-day decision requirement for a project meeting all provisions of ORS 197.311), the Planning Director shall prepare the design review recommendation in lieu of the Design and Landmarks Committee. The Planning Director's recommendation shall satisfy the requirement of Subsection 19.907.6.~~
- B. ~~Provide public notice of the design review meeting per Subsections 19.1011.2.A-C below.~~
- C. ~~Prepare minutes for the design review meeting that include the Design and Landmarks Committee recommendation and the reasons for the recommendation.~~

~~Subsection 19.1011.2 Design Review Meeting Notice Requirements~~

- A. ~~When a design review meeting is required by Section 19.907, the City shall mail written notice of the design review meeting at least 10 days prior to the meeting. The written notice shall be mailed to:~~
1. ~~The applicant and/or applicant's authorized representative.~~
 2. ~~The owner(s) of record of the subject property.~~
 3. ~~Owners of record of properties located within 300 ft of the perimeter of the subject property.~~
 4. ~~Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 ft of the subject property.~~
- B. ~~The mailed public notice shall meet the requirements of Subsection 19.1006.3.D.2.~~
- C. ~~At least 5 days prior to the design review meeting, notice of the application shall be posted on the subject property by the applicant and shall remain posted continuously until the meeting. Sign notice shall meet the requirements of Subsection 19.1001.6.C.1.b.~~

~~Subsection 19.1011.3 Rules of Procedure~~

- A. ~~Design review meetings shall be conducted in accordance with the bylaws and rules of procedure adopted for the Design and Landmarks Committee by City Council. Additionally, the provisions in Subsections 19.1011.4-11 below apply to all design review meetings.~~
- B. ~~At the commencement of a design review meeting, a statement shall be made to those in attendance that:~~
1. ~~Lists the applicable approval criteria.~~

2. ~~States that public comment must be directed toward the applicable approval criteria or other criteria in the Zoning Ordinance or Comprehensive Plan that the person commenting believes is applicable to the proposal.~~
- C. ~~The design review meeting is not a public hearing, but shall be organized in the following manner:~~
1. ~~The applicant shall have an opportunity to make a presentation on the application.~~
 2. ~~The public shall be allowed to comment on the application.~~
 3. ~~The Design and Landmarks Committee shall deliberate on the application and presentation and shall make findings and a recommendation on the application per Subsection 19.1011.10.~~
- D. ~~An abstaining or disqualified member of the committee shall be counted for purposes of forming a quorum. If all members of the committee abstain or are disqualified, the Planning Director shall prepare the design review recommendation in lieu of the Design and Landmarks Committee. The Planning Director's recommendation shall satisfy the requirement of Subsection 19.907.6.~~

~~Subsection 19.1011.4 Challenges to Impartiality~~

- A. ~~A meeting participant may challenge the qualifications of a member of the committee to participate in the recommendation. The challenge shall state the facts relied upon by the challenger relating to a person's bias, prejudgment, personal interest, or other facts from which the challenger has concluded that the member of the committee cannot participate in an impartial manner.~~
- B. ~~The challenged person shall have an opportunity to respond to the challenge. The challenge and any response to the challenge shall be incorporated into the record of the meeting.~~

~~Subsection 19.1011.5 Financial Interests and Conflicts of Interest~~

~~An employee or elected or appointed official of the City who has a direct or substantial financial interest in a proposal may not give an official opinion to the hearing body on the proposal. An elected or appointed official of the City who has a conflict of interest shall refrain from participating as a public official in any discussion or debate on the proposal out of which the actual conflict arises or from voting on the proposal per ORS 244.~~

~~Subsection 19.1011.6 Ex Parte Contacts~~

~~Committee members shall reveal any relevant premeeting or ex parte contacts at the commencement of the design review meeting. If such contacts have impaired the member's impartiality or ability to vote on the proposal, the member shall so state and shall abstain from voting. In addition, parties who had the communication with the member have the right to rebut the substance of the communication at the commencement of the meeting on the proposal.~~

~~Subsection 19.1011.7 Disqualification~~

~~Disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of the committee who are present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.~~

~~Subsection 19.1011.8 Burden and Nature of Proof~~

~~The applicant shall bear the burden of proof and persuasion that the proposal complies with all applicable approval criteria and development standards. The applicant and any opponents may~~

~~submit a set of written findings or statements of factual information which are intended to demonstrate that the proposal complies, or fails to comply, with any or all applicable criteria and standards.~~

~~Subsection 19.1011.9 Continuance of Meeting~~

- A. ~~A design review meeting may be continued if the Planning Director determines that there is sufficient time to hold a continued meeting before the Design and Landmarks Committee and a public hearing before the Planning Commission within the required 120 days or if the applicant waives the 120-day decision requirement (or the 100-day decision requirement for a project meeting all provisions of ORS 197.311) per Subsection 19.1001.7.C.~~
- B. ~~Design review meeting continuance proceedings shall be per Subsection 19.1009.11.~~

~~Subsection 19.1011.10 Design Review Recommendation~~

~~Following the close of the public portion of the design review meeting, the Design and Landmarks Committee shall prepare a written report to the Planning Commission that recommends either approval, approval with conditions, or denial of the application.~~

- A. ~~The written recommendation shall contain the following:~~
- ~~1. The applicable approval criteria against which the application was evaluated.~~
 - ~~2. A statement of the facts that the committee relied upon to determine whether the application satisfied or failed to satisfy each applicable approval criterion and development standard.~~
 - ~~3. The decision to recommend approval or denial of the application, and, if the recommendation is for approval, any recommended conditions of approval. Recommended conditions of approval shall ensure conformance with the applicable approval criteria and development standards and mitigate the anticipated impacts, if any, of the proposal.~~
- B. ~~The recommendation of the Design and Landmarks Committee shall be forwarded to the Planning Commission, which shall consider the recommendation and integrate it into the review process applicable to the proposal.~~
- C. ~~Design and Landmarks Committee recommendations are not appealable.~~

~~Subsection 19.1011.11 Record of Proceedings~~

~~The City shall prepare and maintain minutes of all proceedings in accordance with the bylaws adopted by the City Council for the Design and Landmarks Committee.~~

Exhibit C

PROPOSED CODE AMENDMENTS RELATED TO RETIREMENT OF THE DESIGN AND LANDMARKS COMMITTEE (DLC) (clean version)

TITLE 2 ADMINISTRATION AND PERSONNEL

CHAPTER 2.10 BOARDS, COMMITTEES, AND COMMISSIONS GENERALLY

SECTION 2.10.010 APPLICABILITY

This chapter applies to all City boards, commissions, and committees unless mandated otherwise by State statute or City ordinance, including but not limited to the following boards, commissions, and committees:

- A. Budget Committee (ORS 294.336 and MMC 2.14, exclusive from monthly meetings);
- B. Center/Community Advisory Board (MMC 2.20 and IGA);
- C. Citizens Utility Advisory Board (MMC 2.11);
- D. Library Board (ORS 357.400 to 357.621 and MMC 2.28);
- E. Park and Recreation Board (MMC 2.12);
- F. Planning Commission (ORS 227.010—227.030 and MMC 2.16);
- G. Public Safety Advisory Committee (MMC 2.24); and
- H. Milwaukie Arts Committee (MMC 2.17).

CHAPTER 2.16 PLANNING COMMISSION

SECTION 2.16.010 ESTABLISHED—PURPOSE

~~B. —[subsection deleted]~~

CHAPTER 2.17 MILWAUKIE ARTS COMMITTEE

SECTION 2.17.010 ESTABLISHMENT

There is created a Milwaukie Arts Committee whose duties and responsibilities are as follows:

- A. Support and promote the arts, artists, and art education within the Milwaukie area;
- B. Work cooperatively with other community groups and sources including, but not restricted to, Milwaukie's neighborhood district associations, North Clackamas School District, North Clackamas Parks and Recreation District, Clackamas Arts Action Alliance, New Century Players, Portland Waldorf and other schools in and around Milwaukie, Ledding Library, local businesses, area arts guilds and other groups already existing, or hereafter established, to promote the arts in the community.

CHAPTER 2.18 DESIGN AND LANDMARKS COMMITTEE *[chapter content deleted—reserve chapter number for future use]*

TITLE 14 SIGNS

CHAPTER 14.04 GENERAL PROVISIONS

SECTION 14.04.030 DEFINITIONS

Sign, Nonconforming. “Nonconforming sign” means a sign that complied with applicable standards when created or modified but which does not comply with existing standards. Signs that did not require Planning Commission approval when created will not be considered nonconforming if approval from that body is currently required.

CHAPTER 14.16 SIGN DISTRICTS

SECTION 14.16.060 DOWNTOWN ZONES

H. Illumination

Illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.
2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs must not be internally illuminated. Features on an awning sign may be externally illuminated subject to review and approval by the Planning Commission, per Section 19.1006 Type III Review, according to the following criteria:
 - a. Sign lighting should be designed as an integral component of the building and sign composition.
 - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
 - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination must be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review and approval by the Planning Commission, per Section 19.1006 Type III Review, according to the following criteria:
 - a. The sign should be a unique design that responds to the downtown design guidelines in Subsection 19.508.4.
 - b. The sign copy should be lighter than the sign background.
 - c. The sign background should use a predominance of dark color or be opaque when the light source is on.

CHAPTER 14.32 ADJUSTMENTS

SECTION 14.32.010 AUTHORIZATION TO GRANT OR DENY ADJUSTMENTS

- A. The Planning Commission may authorize adjustments to the requirements of this chapter per Section 19.1006 Type III Review where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this chapter would cause an undue or unnecessary hardship. The cost of meeting the standard will not be a basis for granting an adjustment. In granting an adjustment, the Planning Commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the City and otherwise achieve the purposes of this chapter.
- B. Adjustments may be granted where it can be shown that there are special and unusual circumstances related to the specific property or sign, the adjustment is consistent with the guiding principles of the downtown design guidelines in Subsection 19.508.4, and the adjustment meets either of the following criteria:
 - 1. Strict application of this chapter would cause an undue or unnecessary hardship. The cost of meeting the standard does not constitute a hardship; or
 - 2. The adjustment serves to protect or enhance significant features such as, but not limited to, trees, historic or culturally significant buildings, or landmark signs.

In granting an adjustment, the Planning Commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the City and otherwise achieve the purposes of this chapter.

TITLE 19 ZONING

CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS

SECTION 19.401 WILLAMETTE GREENWAY ZONE WG

Subsection 19.401.6 Criteria

The following will be taken into account in the consideration of a conditional use:

- A. Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan;
- B. Compatibility with the scenic, natural, historic, economic, and recreational character of the river;
- C. Protection of views both toward and away from the river;
- D. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable;
- E. Public access to and along the river, to the greatest possible degree, by appropriate legal means;
- F. Emphasis on water-oriented and recreational uses;
- G. Maintenance of or increase in views between the Willamette River and downtown;

- H. Protection of the natural environment according to regulations in Section 19.402;
- I. Conformance to applicable Comprehensive Plan policies;
- J. The request is consistent with applicable plans and programs of the Division of State Lands;
- K. A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C.

CHAPTER 19.900 LAND USE APPLICATIONS

SECTION 19.907 DOWNTOWN DESIGN REVIEW

Subsection 19.907.3 Review Process

B. Review Types

To achieve the purpose of the downtown design standards and guidelines, there are three downtown design review processes through which to apply for approval:

1. Type I

The ministerial review track provides for a Type I review process pursuant to Section 19.1004 using the design standards in Section 19.508.

2. Type II

The administrative review track provides for a Type II process pursuant to Section 19.1005 that requires staff review utilizing the design standards and applicable guidelines in Section 19.508.

3. Type III

The discretionary review track provides for a Type III review process pursuant to Section 19.1006, through which the Planning Commission determines compliance with the downtown design guidelines in Section 19.508.

Subsection 19.907.6 Variances

- A. Variances cannot be granted for the downtown design standards of Section 19.508. Applications unable to meet one or more standards must meet the applicable downtown design guideline(s) in Subsection 19.508.4 instead and use the Type III discretionary downtown design review process.
- B. Variances can be granted for the downtown development standards of Section 19.304 unless otherwise specified, through the variance review process in Section 19.911.

SECTION 19.911 VARIANCES

Subsection 19.911.6 Building Height Variance in the Downtown Mixed Use Zone

C. Review Process

The building height variance will be subject to Type III review and approval by the Planning Commission, in accordance with Chapter 19.907. The building height variance will be consolidated with downtown design review.

1. Because the building height variance provides substantial flexibility and discretion, additional time may be required for public input and technical evaluation of the proposal. To use this option, the applicant will sign a waiver of the 120-day decision requirement.
2. A special application fee may be required to use this Type III option to allow the City to contract with a registered architect to assist in the review of the height variance application.

CHAPTER 19.1000 REVIEW PROCEDURES

SECTION 19.1005 TYPE II REVIEW

Subsection 19.1005.3 Type II Public Notice

A. Referral

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

1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 ft of the subject property.
2. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

SECTION 19.1006 TYPE III REVIEW

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

Subsection 19.1006.3 Type III Public Notice

C. Referral

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

1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 300 ft of the subject property.
2. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

SECTION 19.1007 TYPE IV REVIEW

Subsection 19.1007.3 Type IV Public Notice

C. Referral

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

1. Any City-recognized neighborhood district association whose boundaries include the subject property or are within 400 ft of the subject property.
2. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

SECTION 19.1010 APPEALS

Subsection 19.1010.6 Specific Provisions for Appeal of a Type III Decision

- A. A Type III decision may be appealed by the applicant, applicant's representative, or any other person or organization who participated in the original decision by providing either testimony or evidence on the record leading to the decision by the review authority.
- B. At least 20 days prior to the appeal hearing, the City will mail written notice of the appeal hearing to all parties who were entitled to Type III public notice per Subsection 19.1006.3.D.1, interested persons, the appellant(s), and Planning Commission.

~~SECTION 19.1011 DESIGN REVIEW MEETINGS~~ *[entire section deleted]*

Brett Kelter

From: Milwaukie Museum <milwaukiemuseum@gmail.com>
Sent: Thursday, August 10, 2023 2:13 PM
To: _City Council; OCR; Ann Ober
Cc: Steve Bennett; Greg Hemer; Brett Kelter; Laura Weigel
Subject: Submission letter for public comment about 8A August 15th
Attachments: We sent you safe versions of your files; letter to City Council about DLC_sfb.pdf

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

This Message originated outside your organization.

Milwaukie Historical Society is aware that the packet for the August 15th City Council Meeting is not yet available on line, but we are attaching public testimony NOT to retire the DLC.

We are assuming all records from the Planning Commission Meeting on July 25th have been sent, so our testimony is a follow up to our previous statement. If anyone from City Council, City Manager or Records Office would like a copy of our previous testimony to PC we are happy to provide.

Thank you in advance

Greg Hemer

Communications Director

Milwaukie Historical Society

milwaukiemuseum@gmail.com



Milwaukie Historical Society

3737 SE Adams St. Milwaukie, OR 97222

www.milwaukiehistoricalsociety.com

milwaukiemuseum@gmail.com



Dear Mayor, City Council, and Planning Staff,

Milwaukie Historical Society submitted a letter to the Planning Commission for public testimony on the retiring of the Design and Landmarks Committee (DLC) for the July 25th Planning Commission. As City Council has been forwarded the public testimony from that meeting, we assume that you have read Milwaukie Historical Society's opinion and objection to the proposed retiring of the Design and Landmarks Committee. Today, we are sending a follow up letter to support the Planning Commission decision on July 25th to not retire the DLC and to clarify questions raised by Planning Staff about our intention in the original letter.

Milwaukie Historical Society believes Planning Commission made the correct decision

When the Planning Commission was deliberating about their decision, they made three really key points. One, since the Comprehensive Plan clearly states in Goal 2 that historic places and their value have been expressed, retiring the DLC would be against our Comprehensive Plan policy. Two, many residents shared their opinion about keeping the DLC and no comments were submitted in support of retiring it. The Planning Commission listened to the public and maintained the program. Three, they looked at the scope of work of the current DLC and used this opportunity to expand its capabilities to better serve the community's needs and desires.

In regards to becoming a Certified Local Government (CLG)

As mentioned in our letter to Planning Commission, City of Milwaukie qualifies for all the advantages of CLG programming, but does not take advantage of them. The major qualification is having a Landmarks or Historic Committee. Milwaukie Historical Society believes that by maintaining the DLC the City can take advantage of its great programs when the City is able to handle the task. Milwaukie Historical Society is not asking the City to immediately join the program, but by maintaining the DLC, the City has the opportunity to engage when the time is right. If the City retires the DLC, then the time lag of accomplishing goals in downtown and elsewhere may be lost. Milwaukie Historical Society believes the Community Development Director and Planning Staff should be aware of the opportunities they would be foregoing by retiring the DLC.

Milwaukie Historical Society is offering a solution to keep the DLC active while Planning Staff engages in other projects

As Milwaukie Historical Society moves forward with the Historic Home Inventory Project, we could use the expertise of the DLC volunteers. The project should take a year and half to complete. We believe this allows the City some time to explore DLC options, keeps DLC members engaged, acknowledges the members willingness to be active in the community, and provides activity for the DLC at no Planning Staff cost or time. We do, though, encourage at least one meeting every six months with Planning Staff and the DLC to update the Planning Staff liaison for the DLC on the progress of the Historic Home Inventory.

Preserving Milwaukie's history for future generations



Milwaukie Historical Society

3737 SE Adams St. Milwaukie, OR 97222

www.milwaukiehistoricalsociety.com

milwaukiemuseum@gmail.com

Proud Member



Conclusion

Milwaukie Historical Society agrees with the Planning Commission decision. We understand that Planning Staff time is valuable, but we believe retiring the DLC does more harm than good. We have offered a variety of solutions to the problem of Staff support and are willing to help. Without the DLC The City of Milwaukie would violate our Comprehensive Plan and reduce - economic advantages to our local businesses. As Milwaukie Historical Society is offering a solution to the dilemma of scope of work for the DLC for the next year and a half, we ask that you use the opportunity to retain the DLC and find new avenues for their success.

Thank you,

Steve Bennett

President

Milwaukie Historical Society

Preserving Milwaukie's history for future generations

From: [Lisa Bentley](#)
To: [OCR](#)
Subject: Design and Landmarks Commission
Date: Monday, August 14, 2023 4:28:19 PM

This Message originated outside your organization.

The City of Milwaukie needs its Landmarks and Design Commission. Please support the decision to retain the Commission.

Thank you.

Sincerely,

Elizabeth M Bentley
Retired member of board of Clackamas County Heritage Council

971.645.9294

Nicole Madigan

From: Leesa Gratreack <leesa.gratreack@gmail.com>
Sent: Monday, August 14, 2023 11:38 AM
To: OCR
Cc: Milwaukie Museum
Subject: Planning Commision Decision about the DLC

This Message originated outside your organization.

Hello,

I am an architectural historian and historic preservation professional in Milwaukie and strongly support the Milwaukie Planning Commission and Milwaukie Historical Society's position to retain the Design and Landmarks Committee (DLC).

I agree with the Commission and Society's position that disbanding the DLC will limit access to grant funding and community support for understanding and protecting Milwaukie's heritage and valuable historic properties. Retiring the DLC would be a short-range action with long-range consequences. Cities looking to effectively grow and manage change need such a committee to do so in a cohesive manner. Milwaukie is known for its charm, beauty, and history, and sustaining the DLC will show the community that the City is committed to retaining those valuable qualities that increase and sustain property values and increase quality of life for those interested in moving to Milwaukie.

Please support the Planning Commission and Society and save the DLC!

Best Regards,

Leesa Gratreack, MS Historic Preservation

Scott Stauffer

From: linda@hammy.org
Sent: Monday, August 14, 2023 12:22 PM
To: _City Council
Subject: Design and Landmarks Committee

I agree with the Planning Commission and Historical Museum's position to retain the Design and Landmarks Committee.
Linda Hedges
5185 SE Elk St
Milwaukie OR 97222

From: [OCR](#)
To: [City Council](#)
Cc: [Laura Weigel](#)
Subject: FW: Public comment for Aug 15th agenda item 8a
Date: Monday, August 14, 2023 11:48:22 AM

Good Morning – please see the comment below; this comment will be included in the record of the 8/15/23 RS meeting.

Nicole Madigan

Deputy City Recorder
she • her • hers
T. 503.786.7551
City of Milwaukie
10722 SE Main St • Milwaukie, OR 97222

From: Greg Hemer <greghemermilw@gmail.com>
Sent: Monday, August 14, 2023 11:02 AM
To: OCR <OCR@milwaukieoregon.gov>
Subject: Public comment for Aug 15th agenda item 8a

This Message originated outside your organization.

I agree with the Planning Commission Decision about the DLC

--

Greg "Frank" Hemer
5822 SE Harrison St.
Milwaukie, OR 97222
971-202-6100

Nicole Madigan

From: mkhemer <mkhemer@comcast.net>
Sent: Monday, August 14, 2023 11:07 AM
To: OCR
Subject: Public comment Aug 15th agenda item 8a

This Message originated outside your organization.

I agree with the Planning Commission decision about the DLC
Michelle Hemer

Sent from my Verizon, Samsung Galaxy smartphone

Nicole Madigan

From: john hoke <nova_rock@icloud.com>
Sent: Monday, August 14, 2023 12:40 PM
To: OCR
Subject: I agree with the Planning Commision Decision about the DLC

This Message originated outside your organization.

I agree with the Planning Commision Decision about the DLC

-John

From: [Brad Johnson](#)
To: [City Council](#)
Subject: DLC
Date: Monday, August 14, 2023 11:31:47 AM

I agree with the Planning commissions decision to maintain the DLC, Milwaukies heritage and historical significance is very important to keeping Milwaukie an interesting and fun place to live. Please make the right decision in keeping the DLC.Thank you. Brad.

Nicole Madigan

From: Debbie Liptan <debbieliptan@mac.com>
Sent: Monday, August 14, 2023 3:43 PM
To: OCR
Subject: Input on DLC Decision - for City Council consideration

This Message originated outside your organization.

I agree with the Planning Commission Decision about the DLC.

I apologize for the late submission, I'm catching up after being out of town. I completely support keeping the DLC and the important function they provide.

Debbie Liptan
Secretary, Historic Milwaukie NDA

Sent from my iPhone

Scott Stauffer

From: Alle MacLeod <amacleod8@gmail.com>
Sent: Monday, August 14, 2023 1:41 PM
To: OCR; _City Council
Subject: Planning Commission Decision about the DLC

Hi there -

Reaching out because I am a Milwaukie resident and our household agrees with the Planning Commission Decision about the DLC.

Best,
Linnea M.

Nicole Madigan

From: BILL MCCRACKEN <ultrabill@comcast.net>
Sent: Monday, August 14, 2023 5:09 PM
To: OCR
Subject: RETAIN THE DESIGN AND LANDMARK COMMITTEE

This Message originated outside your organization.

I agree with the Planning Commision Decision about the DLC by 5pm Tuesday August 15th

Nicole Madigan

From: nicole <nicolezdeb@gmail.com>
Sent: Tuesday, August 15, 2023 9:17 AM
To: OCR
Subject: DLC

This Message originated outside your organization.

Hi there,
I agree with the planning committee's decision about the DLC - keeping it is important to me as a long-time resident of Milwaukie.

Thank you for listening.

Warm regards,
Nicole Zdeb

A stylized, abstract illustration of a flower or shell-like structure in shades of brown, tan, and green, positioned on the left side of the slide.

**RS 8. A. 8/15/23
Presentation**

CODE AMENDMENTS TO RETIRE THE DESIGN & LANDMARKS COMMITTEE (DLC)

(LAND USE FILE #ZA-2023-005)

City Council Public Hearing
August 15, 2023

Laura Weigel, Planning Manager
Brett Kelter, Senior Planner

The DLC has changed over time with respect to its focus and its decision-making authority.

- 1990 = Historic Review Committee
- 1993 = Historic Review Commission
- 2000 = Design & Landmarks Commission
- 2004 = Design & Landmarks Committee

- In 33 years, only 10 HR applications reviewed by DLC
 - There are no code provisions requiring the DLC to review HR applications
- In 23 years, only 12 DDR applications reviewed by DLC
- DLC only recommends to PC, who is the decision maker

THE DLC HISTORY

- Outside of infrequent application review, the primary focus of the DLC has been downtown design, not historic resources.
- The DLC has not actively been involved in Historic Resources work in many years.

RATIONALE FOR RETIRING THE DLC

- Recently revised and adopted downtown design review code
- Current code protects the 16 “significant” historic properties in the city
- Planning Commission has the capacity to review infrequent applications
- Currently, historic resources are defined by the state/federal gov’t
 - Antiquated approach to what constitutes a resource
 - Larger conversation necessary about what should be deemed an Historic Resource
- No current project for the DLC equates to very sporadic meetings

WITHOUT THE DLC

- City still maintains its existing HR Inventory
- Protection of properties on the HR Inventory does not go away
- Planning Commission reviews HR and DDR applications the same way the DLC would by following the criteria in the municipal code
- Future PC recruitment can include design and historic resource professionals if possible
- Historic resource inventory and approach are on the Planning Department workplan in several years
 - Will likely appoint an advisory committee to assist

CITY COUNCIL HEARING TESTIMONY RECEIVED

- Milwaukie Historical Society - Opposed
- 16 others opposed (PC and CC)

STAFF RECOMMENDATION

With the **low volume** of application review, the recent improvements to the Downtown Design Review code, the **Commission's capacity** to review downtown design and historic resources applications, and the **lack** of an immediate **long-range project** for the DLC, staff proposes retiring the DLC.

The proposed code amendments reflect that course of action.

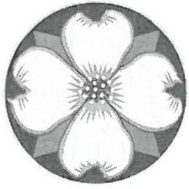
Staff recommends that Council approve the proposed amendments.

DECISION-MAKING OPTIONS

1. Approve the proposed amendments as presented, with the recommended Findings in Support of Approval.
2. Approve the proposed amendments with revisions, revising the recommended Findings as needed.
3. Continue the hearing.
4. Deny the proposed amendments.



Questions?



PUBLIC HEARING ATTENDANCE SIGN-UP SHEET

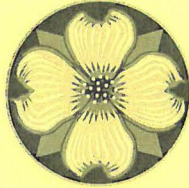
If you wish to have appeal standing and/or to be on the mailing list for Council information from tonight's hearing, please sign-in below.

8/15/2023

8. B. Design and Landmarks Committee (DLC) Code Update – Ordinance

Land Use File No. ZA-2023-005

NAME	ADDRESS	PHONE	EMAIL



CITY OF MILWAUKIE
CITY COUNCIL

10722 SE Main Street
P) 503-786-7502
F) 503-653-2444
ocr@milwaukieoregon.gov

Speaker Card

The City of Milwaukie encourages all citizens to express their views to their city leaders in a **respectful** and **appropriate** manner. If you wish to speak before the City Council, fill out this card and hand it to the City Recorder. Note that this Speaker Card, once submitted to the City Recorder, becomes part of the public record.

Name: STEVE BENNETT **Address:** 3445 SE King Rd
Organization: Milwaukie Historical Society **Phone:** 443-632-8915
Meeting Date: Aug 15 2023 **Email:** sbennett1@comcast.net
Topic: Design & Landscape discussion

Agenda Item You Wish to Speak to:

☐ #5 Community Comments

Note: Council generally does not respond to comments during this meeting.
The city manager will respond to comments at the next regular session.

☐ #7 Other Business, Topic: _____

☒ #8 Public Hearing, Topic: A. DLC

Comments:

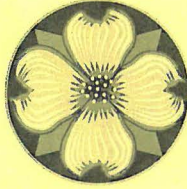
You are Speaking...

☒ in Support of keeping

☐ in Opposition

☐ from a Neutral Position

☐ to ask a Question



CITY OF MILWAUKIE
CITY COUNCIL

10722 SE Main Street
P) 503-786-7502
F) 503-653-2444
ocr@milwaukieoregon.gov

Speaker Card

The City of Milwaukie encourages all citizens to express their views to their city leaders in a **respectful** and **appropriate** manner. If you wish to speak before the City Council, fill out this card and hand it to the City Recorder. Note that this Speaker Card, once submitted to the City Recorder, becomes part of the public record.

Name: Greg Hemer

Organization: _____

Address: 5822 SE Harrison St.

Phone: 971-202-6100

Email: greg.hemer@milwaukie.gov

Meeting Date: 8/15

Topic: 8A

Agenda Item You Wish to Speak to:

☐ #5 Community Comments

Note: Council generally does not respond to comments during this meeting. The city manager will respond to comments at the next regular session.

☐ #7 Other Business, Topic: _____

☒ #8 Public Hearing, Topic: B. DLC

Comments:

You are Speaking...

☐ in Support

☒ in Opposition

☐ from a Neutral Position

☐ to ask a Question



**CITY OF MILWAUKIE
CITY COUNCIL**

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Name: Denyse McGuff **Address:** 815 Washington St
Organization: National Trust for **Phone:** Oregon City, OR 97045
Histor **Email:** guttmcgerson.com
Meeting Date: 8/15/23 **Topic:** DLC

Agenda Item You Wish to Speak to:

☐ #5 Community Comments

Note: Council generally does not respond to comments during this meeting.
The city manager will respond to comments at the next regular session.

☐ #7 Other Business, Topic: _____

☐ #8 Public Hearing, Topic: DLC

Comments:

You are Speaking...

☐ in Support

☒ in Opposition

☐ from a Neutral Position

☐ to ask a Question

COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Reviewed: Laura Weigel, Planning Manager

From: Vera Kolias, Senior Planner

Subject: **Substantive code amendments**

Date Written: Jul 27, 2023

ACTION REQUESTED

Council is asked to provide specific feedback and direction to staff in advance of a future public hearing.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[June 20, 2023](#): Council held a worksession to discuss the proposed amendments.

[April 25, 2023](#): The Planning Commission held a public hearing and voted 4-1 to recommend approval of the proposed amendments.

ANALYSIS

Over the course of several years, Planning Department staff has been tracking issues with current zoning code language and has made recommendations for amended language. These items have been identified through a variety of means, including:

- Questions about specific code language that have been raised by the public on multiple occasions and that are not easily answered;
- Changes in state law requiring amendments to local codes;
- Implementation of the comprehensive plan; and
- Code interpretation applications.

Over the past several months, planning staff has created categories for code amendment packages to help organize the various amendments and to help with the overall department workplan:

- **Large efforts** which will each be its own project – examples include: Willamette Greenway Overlay re-write (MMC 19.401); Natural Resources code re-write (MMC 19.402); Historic Preservation Overlay Zone (MMC 19.403)
- **Substantive code amendments** – examples include a review of Type III Variance applications to determine if changes are warranted to simplify processes. The amendments under discussion at this work session are this type.
- **Housekeeping** – these are amendments that are clarifications or minor tweaks that are not intended to affect meaning or intent of existing regulations. Housekeeping amendments are a way of cleaning up the code.

The current package of proposed **substantive** code amendments includes the following: (Please refer to Attachment 1 for draft language):

1. Access Management (MMC 12.16 – multiple sections)

- **Revise and reorganize** this code section to clarify standards and, more importantly, expand the City Engineer’s authority to modify requirements based on studies and evidence submitted by the applicant. The current code provides for a modification process for some standards and requires a Type III variance for relief from others. The proposed language gives the City Engineer the authority, based on specific required evidence, to modify this subsection’s requirements to provide more appropriate design flexibility determined by sound engineering principles. The Type III variance process is not a good avenue for resolving engineering and safety issues. Since the City Engineer already has this authority, it is reasonable to expand that authority to cover the entire subsection. The proposed language also includes revised requirements for the access study and provides for an appeal process.
 - **NOTE:** a question was raised by the Planning Commission about notice to abutters and/or an opportunity to comment on a requested modification to an access standard. Staff is not recommending that notice or opportunity to comment on a technical component of a development be provided. This is not a discretionary land use decision; it is a technical review based on established engineering and safety standards.
 - **NOTE:** The Planning Commission recommended that consistency with the Transportation System Plan (TSP) and any other applicable policy document be included in the approval criteria, which has been done.

2. Definitions (MMC 19.201)

- **Add** a definition for “plex development” which is used in the code to distinguish duplexes, triplexes, and quadplexes from cottage clusters and townhouse development. Using the general term of “middle housing” to cover all of those housing types is not specific enough in some cases because there are instances where cottage clusters or townhouses require different standards due to the number of units or that they are on individual lots, for example.

3. Residential Zones (MMC 19.301 and 19.302)

- **Revise** the minimum lot size for townhouses on corner lots. The proposed amendments would allow townhouses on corner lots up to 3,500 sq ft in size. Currently, townhouses are only allowed on lots that are between 1,500 – 2,999 sq ft. The amendment is necessary because the street-side-yard setback, which is 15 ft, combined with the maximum lot size of 2,999 sq ft has the effect of disallowing townhouses on a standard corner lot in the city. This is because a typical townhouse is at least 20 ft wide; if you add in the required 15-foot street-side-yard setback, the true minimum width required to accommodate a townhouse is 35 ft. A typical depth for many lots in the city is 100 ft. A lot that is 35 x 100 feet deep exceeds the maximum lot size for a townhouse. The intent of the minimum lot size was not to disallow townhouses on corner lots, so the proposed amendments are limited to corner lots so that these developments are possible.
 - **NOTE:** The Planning Commission recommended that Council discuss street side yard setback standards as a future policy issue.

4. North Milwaukie Innovation Area (NMIA) (MMC 19.312.7)

- **Revise** the applicability of design standards for new construction to only those developments where the closest wall of the street-facing façade is within 50 ft of a front or street side lot line. The proposed amendment acknowledges that developments set far back from the street should not be held to detailed design standards and is consistent with the applicability of residential design standards. This proposed amendment responds to the recently approved variance application for an addition on SE Moores St, which was a good example of why this amendment is appropriate.
 - **NOTE:** a question was raised by the Commission about the proposed applicability standard of 50 ft. The purpose of the design standards is an acknowledgement of the relationship that a building has with the public right-of-way, especially the pedestrian environment. The design standards are not intended to relate to buildings that might be visible from the street; they are more about the direct relationship with the right-of-way. A building located more than 50 ft from the front property line does not directly contribute to that relationship.

5. Supplementary Development Regulation (MMC 19.500)

- **Revise** the language allowing front porches to encroach up to 6 ft into the front yard setback to include covered decks in the backyard (MMC 19.501.2). The proposed language would require that back decks seeking this exception would need to meet the same standards as front porches (unenclosed and no more than 18 inches above grade). Staff has reviewed several proposals for covered back decks on homes constructed with the minimum rear yard setback, which would require a variance. The proposed language would allow for reasonable additional use of a property's back yard without the need for a costly variance application.
- **Revise** the design standards for accessory structures to increase the maximize size for structures proposing metal siding to a Type B accessory structure (600 sq ft and/or 15 ft tall – MMC 19.502.2). Common prefabricated metal sheds/shops are typically up to 600 sq ft; this proposed amendment responds to numerous resident requests to install such a structure without the requirement of adding wood siding to cover the metal siding or require a more expensive stick-built structure to meet the standard to avoid a Type III variance. Maximum lot coverage and minimum setbacks remain in place – the only change is allowance of reasonable design flexibility for larger accessory structures.

6. Building Design Standards – Cottage Cluster Housing (MMC 19.505.4)

- **Revise** the development standards to allow attached cottages in the R-MD zone. The proposed amendment would allow up to three attached cottages, providing an opportunity for a more efficient design and construction of cottage developments in addition to the more traditional single unit cottage. All other size standards for each individual dwelling unit would remain.
- **Revise** the development standards to limit the number of attached cottages in the R-HD zone to four. This ensures that a cottage cluster development proposal will not conflict with the multi-unit residential definition of five or more units in a building.

7. Off-Street Parking (MMC 19.600)

- **Revise** the parking code language to clarify that the new requirements for electric vehicle (EV) charging infrastructure apply when new parking spaces are constructed, and they are associated with a new or existing building. The amendments also extend the EV charging requirement to commercial parking structures (as new parking spaces involving a building).

8. Conditional Uses (MMC 19.905)

- **Revise** the standards for vacation rentals to include a screening requirement similar to that for flag and back lots. Based on a discussion at the Planning Commission work session, staff added a requirement for fencing and/or sight obscuring fencing along the side and rear lot lines of a vacation rental property that abuts a residential lot.
 - **NOTE:** The Planning Commission voted 4-1 to remove this amendment, but recommended that Council discuss this during the work session, which was done.

9. **NEW:** Cottage Cluster Standards (MMC 19.505.4)

- In the process of the housekeeping code amendments that were adopted on April 18, specifically where design standards were consolidated for the housing types, staff neglected to include one section of code into the newly organized design standards section. Staff asks to take advantage of this code amendment process to correct the inadvertent error and add the missing language related to cottage cluster parking design standards.

BUDGET IMPACT

None.

WORKLOAD IMPACT

None.

CLIMATE IMPACT

None.

COORDINATION, CONCURRENCE, OR DISSENT

The Engineering Department assisted in preparing the code amendments.

STAFF RECOMMENDATION

The Planning Commission voted 4-1 to recommend approval of the amendments.

ALTERNATIVES

N/A

ATTACHMENTS

1. Ordinance

- a. Findings in support of approval
- b. Proposed code amendments (underline/strikeout format)
- c. Proposed code amendments (clean)

COUNCIL ORDINANCE No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE TITLE 12 STREETS, SIDEWALKS, AND PUBLIC PLACES, TITLE 17 LAND DIVISION, AND TITLE 19 ZONING, TO MAKE CHANGES TO SELECT SECTIONS FOR THE PURPOSE OF CLARIFICATION AND IMPROVED EFFECTIVENESS (FILE #ZA-2023-002).

WHEREAS, the proposed amendments to Milwaukie Municipal Code (MMC) Titles 12, 17, and 19 to make changes and clarifications that will more effectively communicate and implement existing policy; and

WHEREAS, legal and public notices have been provided as required by law, and opportunities for public review and input has been provided; and

WHEREAS, on April 25, 2023, the 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 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 (MMC) is amended as described in Exhibit B (underline/strikeout version), and Exhibit C (clean version).

Section 3. Effective Date. The amendments shall become effective 30 days from the date of adoption.

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

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

Signed by the Mayor on _____.

ATTEST:

Lisa M. Batey, Mayor

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

Exhibit A

Recommended Findings in Support of Approval File #ZA-2023-002, Substantive Code Fix 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 various regulations that are contained in Title 12 Streets, Sidewalks, and Public Places, Title 17 Land Division, and Title 19 Zoning Ordinance of the Milwaukie Municipal Code (MMC). The land use application file number is ZA-2023-002.
2. The purpose of the proposed code amendments is as a collection of substantive amendments that are clarifications, streamline processes, or address recent variance applications, that are not intended to significantly affect the meaning or intent of existing regulations; they are not intended to be a change in policy. The amendments are located in several titles of the municipal code:
 - Municipal Code –
 - MMC 12.16 – Access Management – Revise modification process
 - Municipal Code –
 - MMC 17.28 – Land Division – Design Standards
 - Zoning Ordinance –
 - MMC 19.201 – Add a definition for plexes
 - MMC 19.301 and 19.302 – Revise the lot size range for townhouses on corner lots
 - MMC 19.312 – NMIA zone – Revise the applicability of design standards
 - MMC 19.501 – General Exceptions – Revise the list of exceptions
 - MMC 19.502 – Accessory Structures – Revise design standards
 - MMC 19.505 – Cottage Cluster Design Standards – Allow attached cottages
 - MMC 19.600 – Clarification regarding EV charging requirements
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.902 Amendments to Maps and Ordinances
 - MMC 19.1000 Review Procedures
4. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. Public hearings were held on April 25, 2023 and August 15, 2023 as required by law.
5. 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 April 25, 2023. A public hearing before City Council was held on August 15, 2023. 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 clarifying in nature and 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 Comprehensive Plan that are listed below are found to be relevant to the proposed text amendment.

- (i) Goal 11.1 for Economic Development reads as follows:

Provide a diverse range of uses, services, and amenities that contribute to a sustainable, equitable, and resilient economy and are adaptable to changing land uses and technology.

Policy 11.1.2 states:

Adapt to industry trends and emerging technologies that have the potential to affect employment, land use, and infrastructure needs, such as automation, the sharing economy, autonomous vehicles, and other future technological advances.

The proposed amendments revise the applicability of design standards for new construction in the North Milwaukie Innovation Area Zone.

- (ii) Goal 7.1 for Housing (Equity) states:

Enable and encourage housing options that meet the needs of all residents, with a specific focus on uplifting historically disenfranchised communities and eliminating disparities for populations with special needs or lower incomes. To continue to encourage an adequate and diverse range of housing types and the optimum utilization of housing resources to meet the housing needs of all segments of the population.

Policy 7.1.2 states:

Establish development standards that regulate size, shape, and form and are not exclusively focused on regulating density.

Goal 8.3 for Urban Design and Land Use states:

Provide a clear and straightforward design review process for development in Milwaukie along with incentives to achieve desired outcomes.

The intent of the proposed amendments is to revise the minimum lot size for townhouses on corner lots. The proposed amendments would allow townhouses on corner lots up to 3,500 sq ft in size. Currently, townhouses are only allowed on lots that are between 1,500 – 2,999 sq ft. The amendment is necessary because the street-side-yard setback, which is 15 ft, combined with the maximum lot size of 2,999 sq ft has the effect of disallowing townhouses on a standard corner lot in the city. This is because a typical townhouse is at least 20 ft wide; if you add in the required 15-foot street-side-yard setback, the true minimum width required to accommodate a townhouse is 35 ft. A typical depth for many lots in the city is 100 ft. A lot that is 35 x 100 feet deep exceeds the maximum lot size for a townhouse. The intent of the minimum lot size was not to disallow townhouses on corner lots, so the proposed amendments are limited to corner lots so that these developments are possible.

The proposed amendments also revise the development standards to allow attached cottages in the R-MD zone. The proposed amendment would allow up to three attached cottages, providing an opportunity for a more efficient design and construction of cottage developments in addition to the more traditional single unit cottage. All other size standards for each individual dwelling unit would remain.

The proposed amendments revise the development standards to limit the number of attached cottages in the R-HD zone to four. This ensures that a cottage cluster development proposal will not conflict with the multi-unit residential definition of five or more units in a building

- (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 amendments are found to be consistent with the Transportation Planning Rule for the following reason. 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.

- (e) 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.

- 6. MMC 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 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 Manager on February 1, 2023.

- 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 Planning Commission had a work session about the proposed amendments on February 28, 2023. The City Council had a study session on the proposed amendments on June 13, 2023.

The current version of the draft amendments has been posted on the City's website since March 23, 2023. On March 27, 2023 staff emailed 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 April 25, 2023, hearing was posted as required on March 23, 2023. A notice of the City Council's August 15, 2023 public hearing was posted as required on July 14, 2023.

- (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 Manager has determined that the proposal affects a large geographic area. Notice to individual property owners and individual properties was not required.

- (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 March 20, 2023.

- (5) Subsection 19.1008.3.C requires notice of a Type V application be sent to Metro 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to Metro on March 21, 2023.

- (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 implement current interpretation or add flexibility and provide clarification.

- (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 April 25, 2023 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on August 15, 2023 and approved the amendments.

Underline/Strikeout Amendments

TITLE 12 STREETS, SIDEWALKS, AND PUBLIC PLACES

CHAPTER 12.16 ACCESS MANAGEMENT

12.16.040 ACCESS REQUIREMENTS AND STANDARDS

A. Access

Private property ~~shall~~ must be provided street access with the use of accessways. Driveway approaches ~~shall~~ must be constructed as set forth in the Milwaukie Public Works Standards.

B. ~~Access Spacing~~ Accessway Location

Spacing and location criteria are based upon several factors, including stopping sight distance, ability of turning traffic to leave a through lane with minimal disruption to operation, minimizing right turn conflict overlaps, maximizing egress capacity, and reducing compound turning conflicts where queues for turning/decelerating traffic encounter conflicting movements from entering/exiting streets and driveways.

1. ~~Standards~~ Spacing Between Accessways

Spacing between accessways is measured between the closest edges of driveway aprons where they abut the roadway. Spacing between accessways and street intersections is measured between the nearest edge of the driveway apron and the nearest face of curb of the intersecting street. Where intersecting streets do not have curb, the spacing is measured from the nearest edge of pavement.

a. Spacing for accessways on arterial streets, as identified in the Milwaukie Transportation System Plan, ~~shall~~ must be a minimum of six hundred (600) feet.

b. Spacing for accessways on collector streets, as identified in the Milwaukie Transportation System Plan, ~~shall~~ must be a minimum of three hundred (300) feet.

~~c. For middle housing development, access spacing requirements may be modified by the City Engineer per Subsection 12.16.040.B.2 based on a variety of factors, including average daily traffic, anticipated increase of traffic to and from the proposed development, crash history at or near the access point, sight distance, and/or other safety elements.~~

2. Double Frontage

When a lot has frontage on two (2) or more streets, access must be provided first from the street with the lowest classification. For example, access must be provided from a local street before a collector or arterial street.

3. Location Limitations

Individual access to single detached residential lots from arterial and collector streets is prohibited. An individual accessway may be approved by the City Engineer only if there is no practicable alternative to access the site, shared access is provided by easement with adjacent properties, and the accessway is designed to contain all vehicle backing movements on the site and provide shared access with adjacent properties.

4. Distance from Property Line

The nearest edge of the driveway apron must be at least five (5) feet from the side property line in residential districts and at least ten (10) feet from the side property line in all other districts. This standard does not apply to accessways shared between two (2) or more properties.

5. Distance from Intersection – Public Streets and Private Access Drives

To protect the safety and capacity of street intersections, the following minimum distances from the nearest intersecting street face of curb to the nearest edge of driveway apron must be maintained. Where intersecting streets do not have curbs, the distances must be measured from the nearest intersecting street edge of pavement. Distance from intersection may be modified as described in MMC Section 12.16.050. Distance from private access drives will be reviewed by the City Engineer on a case-by-case basis, and will include factors such as volume of traffic on both the private access drive and public street it is connected to, clear sight distance, and accident history.

a. At least forty-five (45) feet for single detached residential properties, plex development (i.e., a duplex, triplex, or quadplex), cottage clusters with four (4) or fewer units, and townhouses of four (4) or fewer units accessing local and neighborhood streets. Where the distance cannot be met on existing lots, the driveway apron must be located as far from the nearest intersection street face of curb as practicable; in such cases a formal modification is not required.

b. At least one hundred (100) feet for multi-unit residential properties, or cottage cluster developments of five (5) or more units and all other uses accessing local and neighborhood streets.

c. At least three hundred (300) feet for collectors, or beyond the end of queue of traffic during peak hour conditions, whichever is greater.

d. At least six hundred (600) feet for arterials, or beyond the end of queue of traffic during peak hour conditions, whichever is greater.

2. Modification of Access Spacing

Access spacing may be modified with submission of an access study prepared and certified by a registered Professional Traffic Operations Engineer (PTOE) in the State of Oregon. The Access Study shall assess transportation impacts adjacent to the project frontage within a distance equal to the access spacing requirement established in Subsection 12.16.040.B.1. For example, for a site with arterial access, the access study would include evaluation of site access and capacity along the project frontage plus capacity and access issues within six hundred (600) feet of the adjacent property. The access study shall include the following:

- a. Review of site access spacing and design;
- b. Evaluation of traffic impacts adjacent to the site within a distance equal to the access spacing distance from the project site;
- c. Review of all modes of transportation to the site;
- d. Mitigation measures where access spacing standards are not met that include, but are not limited to, assessment of medians, consolidation of accessways, shared accessways, temporary access, provision of future consolidated accessways, or other measures that would be acceptable to the City Engineer.

C. Accessway Location

1. Double Frontage

When a lot has frontage on two (2) or more streets, access shall be provided first from the street with the lowest classification. For example, access shall be provided from a local street before a collector or arterial street.

2. Location Limitations

Individual access to single detached residential lots from arterial and collector streets is prohibited. An individual accessway may be approved by the City Engineer only if there is no practicable alternative to access the site, shared access is provided by easement with adjacent properties, and the accessway is designed to contain all vehicle backing movements on the site and provide shared access with adjacent properties.

3. Distance from Property Line

The nearest edge of the driveway apron shall be at least five (5) feet from the side property line in residential districts and at least ten (10) feet from the side property line in all other districts. This standard does not apply to accessways shared between two (2) or more properties.

4. Distance from Intersection

To protect the safety and capacity of street intersections, the following minimum distance from the nearest intersecting street face of curb to the nearest edge of driveway apron shall be maintained. Where intersecting streets do not have curbs, the distance shall be

~~measured from the nearest intersecting street edge of pavement. Distance from intersection may be modified with a modification as described in MMC Section 12.16.040.B.2.~~

~~a. At least forty five (45) feet for single detached residential properties or middle housing developments of four (4) or fewer units accessing local and neighborhood streets. Where the distance cannot be met on existing lots, the driveway apron shall be located as far from the nearest intersection street face of curb as practicable.~~

~~b. At least one hundred (100) feet for multi-unit residential properties or middle housing developments of five (5) or more units and all other uses accessing local and neighborhood streets.~~

~~c. At least three hundred (300) feet for collectors, or beyond the end of queue of traffic during peak hour conditions, whichever is greater.~~

~~d. At least six hundred (600) feet for arterials, or beyond the end of queue of traffic during peak hour conditions, whichever is greater.~~

DC. Number of Accessway Locations

1. Safe Access

Accessway locations ~~shall~~ must be the minimum necessary to provide access without inhibiting the safe circulation and carrying capacity of the street.

2. Shared Access

The number of accessways on collector and arterial streets ~~shall~~ must be minimized whenever possible through the use of shared accessways and coordinated on-site circulation patterns. Within commercial, industrial, and multi-unit areas, shared accessways and internal access between similar uses are required to reduce the number of access points to the higher-classified roadways, to improve internal site circulation, and to reduce local trips or movements on the street system. Shared accessways or internal access between uses ~~shall~~ must be established by means of common access easements.

3. Single Detached Residential and Middle Housing

One accessway per property is allowed for single detached residential uses, plex development, cottage cluster development up to four units, and townhouses ~~and middle housing developments up to four (4) units.~~

a. For lots with more than one street frontage on a local street and/or neighborhood route, one additional accessway may be granted. Under such circumstances, a street frontage ~~shall~~ must have no more than one driveway approach.

b. For lots with one street frontage on a local street and/or neighborhood route, one additional accessway may be granted where the driveway approaches can be spaced fifty (50) feet apart, upon review and approval by the City Engineer. The spacing is

measured between the nearest edges of the driveway aprons. Where the fifty (50) foot spacing cannot be met, an additional accessway shall not be granted.

c. No additional accessways shall be granted on collector and arterial streets.

4. All Uses Other than Single Detached Residential and Middle Housing

The number of accessways for uses other than single detached residential and middle housing developments up to four (4) units is subject to the following provisions:

a. Access onto arterial and collector streets is subject to the access spacing requirements of Subsection 12.16.040.B~~2~~₁.

b. One accessway is allowed on local streets and neighborhood routes. One additional accessway is allowed per frontage where the driveway approaches, including adjacent property accessways, can be spaced one hundred fifty (150) feet apart. The spacing is measured between the nearest edges of the driveway aprons.

~~E~~D. Accessway Design

1. Design Guidelines

Driveway approaches ~~shall~~must meet all applicable standards of the Americans with Disabilities Act, U.S. Access Board guidelines or requirements, and Milwaukie Public Works Standards.

2. Authority to Restrict Access

The City Engineer may restrict the location of accessways on streets and require that accessways be placed on adjacent streets upon finding that the proposed access would:

a. Cause or increase existing hazardous traffic conditions;

b. Provide inadequate access for emergency vehicles; or

c. Cause hazardous conditions that would constitute a clear and present danger to the public health, safety, and general welfare.

3. Backing into the Right-of-Way Prohibited

Accessways ~~shall~~must be designed to contain all vehicle backing movements on the site, except for detached or attached single detached residential uses on local streets and neighborhood routes.

~~F~~E. Accessway Size

The following standards allow adequate site access while minimizing surface water runoff and reducing conflicts between vehicles, bicyclists, and pedestrians.

1. Accessways ~~shall~~must be the minimum width necessary to provide the required number of vehicle travel lanes. The City Engineer may require submission of vehicle turning templates to verify that the accessway is appropriately sized for the intended use.
2. Single attached and detached residential uses ~~shall~~must have a minimum driveway apron width of twelve (12) feet and a maximum width of twenty (20) feet.
3. ~~Plex development, cottage cluster developments with up to four units, or townhouse developments~~ Multi-unit residential or middle housing development comprised of up to four (4) units, ~~shall~~must have a minimum driveway apron width of twelve (12) feet on local or neighborhood streets and sixteen (16) feet on collector or arterial streets, and a maximum driveway apron width of twenty (20) feet on all streets.
4. Multi-unit residential or ~~middle housing~~cottage cluster developments with between five (5) and eight (8) units ~~shall~~must have a minimum driveway apron width of sixteen (16) feet on local or neighborhood streets and twenty (20) feet on collector or arterial streets, and a maximum driveway apron width of twenty-four (24) feet.
5. Multi-unit residential or ~~middle housing~~cottage cluster developments with more than eight (8) dwelling units, and off-street parking areas with sixteen (16) or more spaces, ~~shall~~must have a minimum driveway apron width of twenty (20) feet on local or neighborhood streets and twenty-four (24) feet on collector or arterial streets, and a maximum driveway apron width of thirty (30) feet.
6. Commercial, office, and institutional uses ~~shall~~must have a minimum driveway apron width of sixteen (16) feet and a maximum width of thirty-six (36) feet.
7. Industrial uses ~~shall~~must have a minimum driveway apron width of twenty-four (24) feet and a maximum width of forty-five (45) feet.
8. Maximum driveway apron widths for commercial and industrial uses may be increased if the City Engineer determines that more than two (2) lanes are required based on the number of trips anticipated to be generated or the need for on-site turning lanes. (Ord. 2218 § 2 (Exh. B), 2022; Ord. 2168 § 2, 2019; Ord. 2004 § 1, 2009)

12.16.050 ~~VARIANCE~~ MODIFICATIONS

~~Relief from any access management requirement or standard of Section 12.16.040 may be granted through a variance process, which requires submission and approval of a Variance land use application. Variance criteria and procedures are located in Section 19.911. (Ord. 2025 § 3, 2011; Ord. 2004 § 1, 2009)~~

Access management standards may be modified with submission of an access study prepared and certified by a registered Professional Traffic Operations Engineer (PTOE) in the State of Oregon, when required by the City Engineer based on street classification. The Access Study must assess transportation impacts adjacent to the project frontage within a distance equal to the access spacing requirement established in Subsection 12.16.040.B.1. For example, for a site with arterial access, the access study would include evaluation of site access and capacity

along the project frontage plus capacity and access issues within six hundred (600) feet of the adjacent property. The access study must include the following:

1. Review of site access spacing and design;
2. Evaluation of traffic impacts adjacent to the site within a distance equal to the access spacing distance from the project site;
3. Traffic Safety: provide ODOT crash data (for the most recent five-year period for which data is available) adjacent to the site within a distance equal to the access spacing distance from the project site;
4. Review of all modes of transportation to the site;
5. Evaluation of traffic volume, traffic type, and speed of existing traffic on street(s) where access is proposed to be taken;
6. Mitigation measures where access standards are not met that include, but are not limited to, assessment of medians, consolidation of accessways, shared accessways, temporary access, provision of future consolidated accessways, or other measures that would be acceptable to the City Engineer.
7. Evidence of consistency with the Transportation System Plan.

12.16.060 RIGHT OF APPEAL

If the applicant is dissatisfied with the written decision of the City Engineer for a modification request submitted pursuant to Subsection 12.16.050, the applicant may file a written appeal with the Community Development Director no later than thirty (30) days from the date that the decision was mailed. The appeal must contain a statement of the reasons why the applicant is dissatisfied with the written decision, and must be signed by the applicant, or by someone authorized to sign on the applicant's behalf. A notice of receipt must be mailed to the applicant by registered mail within five (5) days of the receipt of the appeal. The Community Development Director must act upon the appeal no later than sixty (60) days after receipt, and a copy of the written decision must be mailed to the applicant by registered mail no later than five (5) days after preparation of the decision. The decision of the Community Development Director shall be final.

~~Appeal of the decision of the City Engineer for a modification request submitted pursuant to Subsection 12.16.050 any access management requirement or standard of Section 12.16.040 not associated with a land use decision is subject to the provisions of Section 19.1006 Type III Review. (Ord. 2025 § 3, 2011; Ord. 2004 § 1, 2009)~~

12.16.070 VIOLATION PENALTY

Any person, firm, or corporation violating any of the provisions of this chapter, or causing, permitting, or suffering the same to be done, shall be fined not more than two hundred fifty dollars (\$250.00). Each such person, firm, or corporation shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted. (Ord. 2004 § 1, 2009)

Title 17 Land Division

CHAPTER 17.28 DESIGN STANDARDS

17.28.040 GENERAL LOT DESIGN

This section does not apply to units of land that are created for purposes other than land development including parks, natural areas, right-of-way dedications, or reservations of a similar nature. Lots and tracts created for cottage cluster housing development, per Subsection 19.505.4, are also exempt from the requirements of this section.

C. Limits on Compound Lot Line Segments

Changes in direction alongside and rear lot lines ~~shall~~must be avoided. Cumulative lateral changes in direction of a side or rear lot line exceeding ~~10%~~ 20% of the distance between opposing lot corners along a given lot line may only be permitted through the variance provisions of MMC Subsection 19.911. Changes in direction ~~shall~~must be measured from a straight line drawn between opposing lot corners.

Title 19 Zoning Ordinance

CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

Residential Uses and Structures

"Plex development" means a duplex, triplex, or quadplex.

CHAPTER 19.300 BASE ZONES

19.301 MODERATE DENSITY RESIDENTIAL ZONE

Table 19.301.4 Moderate Density Residential Development Standards					
Standard	R-MD				Standards/ Additional Provisions
	Lot size (square feet)				
	1,500 – 2,999	3,000–4,999	5,000- 6,999 ²	7,000 and up	
A. Permitted Dwelling Type					
	Townhouse ¹ , Cottage ¹	Cottage ¹ , Duplex, Triplex, Quadplex	Single Detached Dwelling, Single Detached Dwelling,	Single Detached Dwelling, Single Detached Dwelling,	Subsection 19.501.1 Lot Size Exceptions

			with up to 2 ADUs, Cottage¹ , Duplex, Triplex, Quadplex Quadplex	with 2 ADUs, Cottage¹ , Duplex, Triplex, Quadplex, Cottage Cluster	
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1 ~~For a cottage within a cottage cluster only.~~ A townhouse is permitted on a corner lot up to 3,500 sq ft in area.

19.302 HIGH DENSITY RESIDENTIAL ZONE

19.302.4 Development Standards

In the high density residential zone, the development standards in Table 19.302.4 apply. Notes and/or cross references to other applicable code sections are listed in the “Standards/Additional Provisions” column. Additional standards are provided in Section 19.302.5.

The standards in Subsection 19.302.4 are not applicable to cottage cluster development except where specifically referenced by Subsection 19.505.4.

See Sections 19.201 Definitions and 19.202 Measurements for specific descriptions of standards and measurements listed in the table.

In the high density residential zone the following housing types are permitted on lot sizes as follows:

Between 1,500 to 2,999 sq ft: Townhouse; a townhouse is permitted on a corner lot up to 3,500 sq ft in area. ; ~~Cottage in a cottage cluster~~

Table 19.302.2 High Density Residential Uses Allowed		
Use	R-HD	Standards/ Additional Provisions
Residential Uses		
Mixed Use	P	Subsection 19.505.7 Nonresidential Development

19.302.5 Additional Development Standards

B. Lot Coverage

The lot coverage standards in Subsection 19.302.4.B.4 are modified for specific uses and lot sizes as described below. The reductions and increases are additive for lots that are described by one or more of the situations below.

1. Increased Lot Coverage for Single Detached Dwellings and Middle Housing

19.312 NORTH MILWAUKIE INNOVATION AREA

19.312.7 Design Standards for All Uses in the MUTSA and on NME Key Streets

The following development standards apply to all uses in the MUTSA Zone and in the NME Zone on properties located on the following key streets and key corners: McBrod Avenue, Main Street, 17th Avenue, and Ochoco Street (see Figure 312.7.1).

A. Design Standards for All New Construction and Major Exterior Alterations

The design standards contained in this section are intended to encourage building design and construction with durable, high-quality materials. The design standards in this section ~~generally~~ apply to the street-facing façades of new, and major alterations to, commercial, institutional, manufacturing, and mixed-use buildings when the closest wall of the street-facing façade is within 50 ft of a front or street-side lot line. Exterior maintenance and repair and minor exterior alterations are not subject to these standards. Subsection 19.312.7.B below defines exterior maintenance and repair and major/minor exterior and interior alterations.

CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

19.501 GENERAL EXCEPTIONS

19.501.2 Yard Exceptions

C. A covered porch or deck on a single detached dwelling or middle housing unit may extend 6 ft into a required front or rear yard if all of the following standards are met:

1. The porch or deck is not enclosed on any side other than what is enclosed by the exterior walls of the dwelling. The following are not considered to be enclosures: structural

supports for a covered porch, projections not extending more than 3 ft upward from the surface of the porch, railings, retractable sunshades, screens, or netting.

2. The surface of the porch or deck does not exceed 18 in high above the average grade.
3. The porch or deck is at least 5 ft from the front and/or rear lot line.

19.502 ACCESSORY STRUCTURES

19.502.2 Specific Provisions for Accessory Structures

A. The following standards apply to ~~for~~ residential accessory structures on single detached unit, townhouse, cottage cluster, and plex development properties. ~~family detached, duplex, rowhouse, and cottage cluster properties.~~ The standards in Subsection 19.502.2.A do not apply to pools, uncovered decks, and patios.

The purpose of these standards is to allow accessory structures that accommodate the typical needs of a ~~single family detached residence. while protecting the character of single family neighborhoods.~~

1. Development Standards

b. Other Development Standards

~~(3) A minimum of 5 ft is required between the exterior wall of an accessory structure and the exterior wall of any other structure on a site, excluding a fence or similar structure.~~

~~(4)~~ (3) A covered walkway or breezeway is allowed between a primary structure and accessory structure. Such connection shall not exempt the accessory structure from compliance with the standards of this section, unless the connection is fully enclosed and meets the building code definition of a conditioned space, and is all of the following, which results in an addition and is not an accessory structure:

2. Design Standards

a. Metal siding is prohibited on structures more than ~~10~~ 15 ft high or with a footprint greater than ~~200~~ 600 sq ft, unless the siding replicates the siding on the primary dwelling or has the appearance of siding that is commonly used for residential structures.

~~b. Structures located in a front, side, or street side yard that are visible from the right of way at a pedestrian level shall use exterior siding and roofing materials that are commonly used on residential structures.~~

19.505 BUILDING DESIGN STANDARDS

19.505.4 Cottage Cluster Housing

C. Development Standards

The standards listed below in Table 19.505.4.C.1 are the applicable development and design standards for cottage cluster housing. Additional design standards are provided in Subsection 19.505.1.

Table 19.505.4.C.1 Cottage Cluster Development Standards		
Standards	R-MD	R-HD
A. Home Structure Types		
1. Building types allowed, minimum and maximum number per cluster	Detached <u>and Attached</u> cottages 3 minimum 12 maximum dwelling units <u>Maximum number of attached units = 3</u>	Detached and Attached <u>cottages</u> 3 minimum 12 maximum dwelling units <u>Maximum number of attached units = 4</u>
B. Home Dwelling Unit Size		
1. Max building footprint per <u>home dwelling unit</u>	900 sf	
2. Max average floor area per dwelling unit	1,400 sf	

E. Site Design and Other Standards

4. Off-Street Parking

2 f. Off-street parking may be arranged in clusters, subject to the following standards:

- i. (1) Cottage cluster projects with fewer than 16 cottages are permitted parking clusters of not more than five contiguous spaces.
- ii. (2) Cottage cluster projects with 16 cottages or more are permitted parking clusters of not more than eight contiguous spaces.
- iii. (3) Parking clusters must be separated from all other areas by at least 4 ft of landscaping.
- iv. (4) Clustered parking areas may be covered.

3 g. Off-street parking spaces and vehicle maneuvering areas must not be located:

- i. (1) Within of 20 ft from any street property line, except alley property lines;
- ii. (2) Between a street property line and the front façade of cottages located closest to the street property line. This standard does not apply to alleys.
- iii. (3) Off-street parking spaces must not be located within 10 ft of any other property line, except alley property lines. Driveways and drive aisles are permitted within 10 ft of other property lines.

h. Landscaping, fencing, or walls at least three feet tall must separate clustered parking areas and parking structures from common courtyards and public streets.

i. Garages and carports (whether shared or individual) must not abut common courtyards.

j. Individual attached garages up to 200 square feet must be exempted from the calculation of maximum building footprint for cottages.

k. Individual detached garages must not exceed 400 square feet in floor area.

l. Garage doors for attached and detached individual garages must not exceed 20 feet in width.

CHAPTER 19.600 OFF-STREET PARKING AND LOADING

19.602.3 Applicability for Development and Change in Use Activity

The provisions of Chapter 19.600 apply to development and changes of use as described in Subsection 19.602.3.

- A. Development of a vacant site shall have off-street parking and off-street loading areas that conform to the requirements of Chapter 19.600. Development of a site that results in an increase of 100% or more of the existing floor area and/or structure footprint on a site shall also conform to the requirements of Chapter 19.600. The construction of new off-street parking spaces may be subject to the electric vehicle charging requirements of Subsection 19.605.5. The floor area and/or footprint of structures demolished prior to development or redevelopment on the site shall not be considered when calculating the increase in floor area and/or structural footprints.

19.602.4 Applicability not Associated With Development or Change in Use

- A. Any parking or loading area developed to serve an existing use(s) that is not associated with development activity or a change in use described in Subsection 19.602.3 shall conform to

the requirements of Sections 19.604 and 19.606-19.611, as well as to the electric vehicle (EV) charging requirements of Subsection 19.605.5 as applicable. The total number of spaces in the existing parking area and new parking area shall not exceed the maximum allowed quantity of parking as established in Section 19.605.

- B. Any parking or loading area that is not developed to serve an existing use and is not associated with development activity or a change in use as described in Subsection 19.602.3 shall conform to the requirements of Sections 19.604 and 19.606-19.611. The requirements of Section 19.605 do not apply to parking areas described under Subsection 19.602.4.B.

19.605 Vehicle Parking Quantity Requirements

The purpose of Section 19.605 is to ensure that development provides adequate, but not excessive, vehicle parking based on their estimated parking demand. Subsection 19.605.1 establishes parking ratios for common land uses, and Subsection 19.605.3 allows certain exemptions and reductions to these ratios based on location or on-site amenities. Subsection 19.605.5 details requirements for installing electric vehicle (EV) charging infrastructure in new multi-unit, mixed-use, commercial, and industrial developments. Modifications to the established parking ratios and determinations of parking requirements for unique land uses are allowed with discretionary review per Subsection 19.605.2.

19.605.5 Electric Vehicle (EV) Charging Requirements

Required EV charging spaces. All new buildings that are commercial, industrial, multi-unit with 5 or more dwelling units, or mixed-use with 5 or more dwelling units and that provide new off-street parking must include sufficient space for electrical service capacity to support at least a Level 2 EV charger at required EV charging spaces as outlined below. For terms not defined elsewhere in Title 19, see applicable sections of the state building code and/or OAR 918-460-0200.

- A. **~~Commercial and Industrial Parking Buildings.~~** For new commercial and industrial buildings that provide off-street parking, where new off-street parking spaces are constructed, choose one of the following:
- 1) At least 50% of the total number of newly constructed parking spaces must include electrical conduit adjacent to the spaces that will allow for the installation of at least a Level 2 EV charger;
- OR**
- 2) At least 20% of the total number of newly constructed parking spaces must include electrical conduit adjacent to the spaces that will allow for the installation of at least a Level 2 EV charger. At least 5% of newly constructed parking spaces must include an installed Level 2 or Level 3 EV charger. Parking spaces with installed chargers count toward the 20% minimum requirement.
- B. **~~Multi-Unit and Mixed-Use Residential Parking Buildings.~~** For new multi-unit and mixed-use buildings with five or more dwelling units, where new off-street parking spaces are provided constructed, choose one of the following:

- 1) All (100%) of the newly constructed parking spaces must include electrical conduit adjacent to the spaces that will allow for the installation of at least a Level 2 EV charger;

OR

- 2) At least 40% of the total number of newly constructed parking spaces must include electrical conduit adjacent to the spaces that will allow for the installation of at least a Level 2 EV charger. At least 10% of newly constructed parking spaces must include an installed Level 2 or Level 3 EV charger. Parking spaces with installed chargers count toward the 40% minimum requirement.

C. **Structured Parking Facilities.** For new structured parking facilities, where new off-street parking spaces are constructed, choose one of the following:

- 1) At least 50% of the total number of newly constructed parking spaces must include electrical conduit adjacent to the spaces that will allow for the installation of at least a Level 2 EV charger;

OR

- 2) At least 20% of the total number of newly constructed parking spaces must include electrical conduit adjacent to the spaces that will allow for the installation of at least a Level 2 EV charger. At least 5% of newly constructed parking spaces must include an installed Level 2 or Level 3 EV charger. Parking spaces with installed chargers count toward the 20% minimum requirement.

CHAPTER 19.900 LAND USE APPLICATIONS

19.905 CONDITIONAL USES

19.905.9 Standards Governing Conditional Uses

G. Vacation Rentals

Operation of a vacation rental requires the following:

1. Prior to initial occupancy, the Building Official shall verify that building code and fire code standards are satisfied.

~~2. Prior to initial occupancy, continuous screening is required along the rear and side lot lines of the vacation rental property abutting any neighboring residential lot. Any combination of dense plantings of trees and shrubs with a minimum height of 6 ft that will provide continuous sight obstruction for the benefit of adjoining residential properties within 3 years of planting is allowed. Fencing must comply with the fence regulations in MMC 19.502.2.B.~~

23. With annual filing of MMC Title 5 Business Tax, the operator shall send a notice to neighbors within 300 ft that includes the following information:

- a. Property owner contact information;
- b. Vacation rental operator and/or property manager contact information; and
- c. City of Milwaukie Police nonemergency telephone number.

Clean Amendments

TITLE 12 STREETS, SIDEWALKS, AND PUBLIC PLACES

CHAPTER 12.16 ACCESS MANAGEMENT

12.16.040 ACCESS REQUIREMENTS AND STANDARDS

A. Access

Private property must be provided street access with the use of accessways. Driveway approaches must be constructed as set forth in the Milwaukie Public Works Standards.

B. Accessway Location

Spacing and location criteria are based upon several factors, including stopping sight distance, ability of turning traffic to leave a through lane with minimal disruption to operation, minimizing right turn conflict overlaps, maximizing egress capacity, and reducing compound turning conflicts where queues for turning/decelerating traffic encounter conflicting movements from entering/exiting streets and driveways.

1. Spacing Between Accessways

Spacing between accessways is measured between the closest edges of driveway aprons where they abut the roadway. Spacing between accessways and street intersections is measured between the nearest edge of the driveway apron and the nearest face of curb of the intersecting street. Where intersecting streets do not have curb, the spacing is measured from the nearest edge of pavement.

a. Spacing for accessways on arterial streets, as identified in the Milwaukie Transportation System Plan, must be a minimum of six hundred (600) feet.

b. Spacing for accessways on collector streets, as identified in the Milwaukie Transportation System Plan, must be a minimum of three hundred (300) feet.

2. Double Frontage

When a lot has frontage on two (2) or more streets, access must be provided first from the street with the lowest classification. For example, access must be provided from a local street before a collector or arterial street.

3. Location Limitations

Individual access to single detached residential lots from arterial and collector streets is prohibited. An individual accessway may be approved by the City Engineer only if there is no practicable alternative to access the site, shared access is provided by easement with adjacent properties, and the accessway is designed to contain all vehicle backing movements on the site and provide shared access with adjacent properties.

4. Distance from Property Line

The nearest edge of the driveway apron must be at least five (5) feet from the side property line in residential districts and at least ten (10) feet from the side property line in all other districts. This standard does not apply to accessways shared between two (2) or more properties.

5. Distance from Intersection – Public Streets and Private Access Drives

To protect the safety and capacity of street intersections, the following minimum distances from the nearest intersecting street face of curb to the nearest edge of driveway apron must be maintained. Where intersecting streets do not have curbs, the distances must be measured from the nearest intersecting street edge of pavement. Distance from intersection may be modified as described in MMC Section 12.16.050. Distance from private access drives will be reviewed by the City Engineer on a case-by-case basis, and will include factors such as volume of traffic on both the private access drive and public street it is connected to, clear sight distance, and accident history.

- a. At least forty-five (45) feet for single detached residential properties, plex development (i.e., a duplex, triplex, or quadplex), cottage clusters with four (4) or fewer units, and townhouses of four (4) or fewer units accessing local and neighborhood streets. Where the distance cannot be met on existing lots, the driveway apron must be located as far from the nearest intersection street face of curb as practicable; in such cases a formal modification is not required.
- b. At least one hundred (100) feet for multi-unit residential properties, or cottage cluster developments of five (5) or more units and all other uses accessing local and neighborhood streets.
- c. At least three hundred (300) feet for collectors, or beyond the end of queue of traffic during peak hour conditions, whichever is greater.
- d. At least six hundred (600) feet for arterials, or beyond the end of queue of traffic during peak hour conditions, whichever is greater.

C. Number of Accessway Locations

1. Safe Access

Accessway locations must be the minimum necessary to provide access without inhibiting the safe circulation and carrying capacity of the street.

2. Shared Access

The number of accessways on collector and arterial streets must be minimized whenever possible through the use of shared accessways and coordinated on-site circulation patterns. Within commercial, industrial, and multi-unit areas, shared accessways and internal access between similar uses are required to reduce the number of access points to the higher-classified roadways, to improve internal site circulation, and to reduce local trips or movements on the street system. Shared accessways or internal access between uses must be established by means of common access easements.

3. Single Detached Residential and Middle Housing

One accessway per property is allowed for single detached residential uses, plex development, cottage cluster development up to four units, and townhouses up to four (4) units.

- a. For lots with more than one street frontage on a local street and/or neighborhood route, one additional accessway may be granted. Under such circumstances, a street frontage must have no more than one driveway approach.
- b. For lots with one street frontage on a local street and/or neighborhood route, one additional accessway may be granted where the driveway approaches can be spaced fifty (50) feet apart, upon review and approval by the City Engineer. The spacing is measured between the nearest edges of the driveway aprons. Where the fifty (50) foot spacing cannot be met, an additional accessway shall not be granted.
- c. No additional accessways shall be granted on collector and arterial streets.

4. All Uses Other than Single Detached Residential and Middle Housing

The number of accessways for uses other than single detached residential and middle housing developments up to four (4) units is subject to the following provisions:

- a. Access onto arterial and collector streets is subject to the access spacing requirements of Subsection 12.16.040.B.
- b. One accessway is allowed on local streets and neighborhood routes. One additional accessway is allowed per frontage where the driveway approaches, including adjacent property accessways, can be spaced one hundred fifty (150) feet apart. The spacing is measured between the nearest edges of the driveway aprons.

D. Accessway Design

1. Design Guidelines

Driveway approaches must meet all applicable standards of the Americans with Disabilities Act, U.S. Access Board guidelines or requirements, and Milwaukie Public Works Standards.

2. Authority to Restrict Access

The City Engineer may restrict the location of accessways on streets and require that accessways be placed on adjacent streets upon finding that the proposed access would:

- a. Cause or increase existing hazardous traffic conditions;
- b. Provide inadequate access for emergency vehicles; or
- c. Cause hazardous conditions that would constitute a clear and present danger to the public health, safety, and general welfare.

3. Backing into the Right-of-Way Prohibited

Accessways must be designed to contain all vehicle backing movements on the site, except for detached or attached single detached residential uses on local streets and neighborhood routes.

E. Accessway Size

The following standards allow adequate site access while minimizing surface water runoff and reducing conflicts between vehicles, bicyclists, and pedestrians.

1. Accessways must be the minimum width necessary to provide the required number of vehicle travel lanes. The City Engineer may require submission of vehicle turning templates to verify that the accessway is appropriately sized for the intended use.
2. Single attached and detached residential uses must have a minimum driveway apron width of twelve (12) feet and a maximum width of twenty (20) feet.
3. Plex development, cottage cluster developments with up to four units, or townhouse developments comprised of up to four (4) units, must have a minimum driveway apron width of twelve (12) feet on local or neighborhood streets and sixteen (16) feet on collector or arterial streets, and a maximum driveway apron width of twenty (20) feet on all streets.
4. Multi-unit residential or cottage cluster developments with between five (5) and eight (8) units must have a minimum driveway apron width of sixteen (16) feet on local or neighborhood streets and twenty (20) feet on collector or arterial streets, and a maximum driveway apron width of twenty-four (24) feet.
5. Multi-unit residential or cottage cluster developments with more than eight (8) dwelling units, and off-street parking areas with sixteen (16) or more spaces, must have a minimum driveway apron width of twenty (20) feet on local or neighborhood streets and twenty-four (24) feet on collector or arterial streets, and a maximum driveway apron width of thirty (30) feet.
6. Commercial, office, and institutional uses must have a minimum driveway apron width of sixteen (16) feet and a maximum width of thirty-six (36) feet.
7. Industrial uses must have a minimum driveway apron width of twenty-four (24) feet and a maximum width of forty-five (45) feet.

8. Maximum driveway apron widths for commercial and industrial uses may be increased if the City Engineer determines that more than two (2) lanes are required based on the number of trips anticipated to be generated or the need for on-site turning lanes. (Ord. 2218 § 2 (Exh. B), 2022; Ord. 2168 § 2, 2019; Ord. 2004 § 1, 2009)

12.16.050 MODIFICATIONS

Access management standards may be modified with submission of an access study prepared and certified by a registered Professional Traffic Operations Engineer (PTOE) in the State of Oregon, when required by the City Engineer based on street classification. The Access Study must assess transportation impacts adjacent to the project frontage within a distance equal to the access spacing requirement established in Subsection 12.16.040.B.1. For example, for a site with arterial access, the access study would include evaluation of site access and capacity along the project frontage plus capacity and access issues within six hundred (600) feet of the adjacent property. The access study must include the following:

1. Review of site access spacing and design;
2. Evaluation of traffic impacts adjacent to the site within a distance equal to the access spacing distance from the project site;
3. Traffic Safety: provide ODOT crash data (for the most recent five-year period for which data is available) adjacent to the site within a distance equal to the access spacing distance from the project site;
4. Review of all modes of transportation to the site;
5. Evaluation of traffic volume, traffic type, and speed of existing traffic on street(s) where access is proposed to be taken;
6. Mitigation measures where access standards are not met that include, but are not limited to, assessment of medians, consolidation of accessways, shared accessways, temporary access, provision of future consolidated accessways, or other measures that would be acceptable to the City Engineer.

12.16.060 RIGHT OF APPEAL

If the applicant is dissatisfied with the written decision of the City Engineer for a modification request submitted pursuant to Subsection 12.16.050, the applicant may file a written appeal with the Community Development Director no later than thirty (30) days from the date that the decision was mailed. The appeal must contain a statement of the reasons why the applicant is dissatisfied with the written decision, and must be signed by the applicant, or by someone authorized to sign on the applicant's behalf. A notice of receipt must be mailed to the applicant by registered mail within five (5) days of the receipt of the appeal. The Community Development Director must act upon the appeal no later than sixty (60) days after receipt, and a copy of the written decision must be mailed to the applicant by registered mail no later than five (5) days after preparation of the decision. The decision of the Community Development Director shall be final.

12.16.070 VIOLATION PENALTY

Any person, firm, or corporation violating any of the provisions of this chapter, or causing, permitting, or suffering the same to be done, shall be fined not more than two hundred fifty dollars (\$250.00). Each such person, firm, or corporation shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted. (Ord. 2004 § 1, 2009)

Title 17 Land Division

CHAPTER 17.28 DESIGN STANDARDS

17.28.040 GENERAL LOT DESIGN

This section does not apply to units of land that are created for purposes other than land development including parks, natural areas, right-of-way dedications, or reservations of a similar nature. Lots and tracts created for cottage cluster housing development, per Subsection 19.505.4, are also exempt from the requirements of this section.

C. Limits on Compound Lot Line Segments

Changes in direction alongside and rear lot lines must be avoided. Cumulative lateral changes in direction of a side or rear lot line exceeding 20% of the distance between opposing lot corners along a given lot line may only be permitted through the variance provisions of MMC Subsection 19.911. Changes in direction must be measured from a straight line drawn between opposing lot corners.

Title 19 Zoning Ordinance

CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

Residential Uses and Structures

“Plex development” means a duplex, triplex, or quadplex.

CHAPTER 19.300 BASE ZONES

19.301 MODERATE DENSITY RESIDENTIAL ZONE

Table 19.301.4 Moderate Density Residential Development Standards					
Standard	R-MD				Standards/ Additional Provisions
	Lot size (square feet)				
	1,500 – 2,999	3,000–4,999	5,000-6,999 ²	7,000 and up	
A. Permitted Dwelling Type					
	Townhouse ¹	Duplex, Triplex, Quadplex	Single Detached Dwelling, Single Detached Dwelling, with up to 2 ADUs, Duplex, Triplex, Quadplex	Single Detached Dwelling, Single Detached Dwelling, with 2 ADUs, Duplex, Triplex, Quadplex, Cottage Cluster	Subsection 19.501.1 Lot Size Exceptions

¹ A townhouse is permitted on a corner lot up to 3,500 sq ft in area.

19.302 HIGH DENSITY RESIDENTIAL ZONE

19.302.4 Development Standards

In the high density residential zone, the development standards in Table 19.302.4 apply. Notes and/or cross references to other applicable code sections are listed in the “Standards/Additional Provisions” column. Additional standards are provided in Section 19.302.5.

The standards in Subsection 19.302.4 are not applicable to cottage cluster development except where specifically referenced by Subsection 19.505.4.

See Sections 19.201 Definitions and 19.202 Measurements for specific descriptions of standards and measurements listed in the table.

In the high density residential zone the following housing types are permitted on lot sizes as follows:

Between 1,500 to 2,999 sq ft: Townhouse; a townhouse is permitted on a corner lot up to 3,500 sq ft in area.

Table 19.302.2 High Density Residential Uses Allowed		
Residential Uses		
Use	R-HD	Standards/ Additional Provisions
Mixed Use	P	Subsection 19.505.7 Nonresidential Development

19.303 COMMERCIAL MIXED-USE ZONES

19.303.4 Detailed Development Standards

The following detailed development standards describe additional allowances, restrictions, and exemptions related to the development standards of Table 19.303.3.

B. Building Height

1. Intent

Maximum building height standards promote a compatible building scale and relationship of one structure to another.

2. Standards

- a. The base maximum building height in the GMU Zone is three stories or 45 ft, whichever is less. Height bonuses are available for buildings that meet the standards of Subsection 19.303.4.B.3.
- b. Buildings in the GMU Zone must provide a step back of at least 15 ft for any street-facing portion of the building above the base maximum height as shown in Figure 19.303.4.B.2.b.
- c. The maximum building height in the NMU Zone is three stories or 45 ft, whichever is less. No building height bonuses are available in the NMU Zone.

3. Height Bonuses

To incentivize the provision of additional public amenities or benefits beyond those required by the baseline standards, height bonuses are available for buildings that include desired public amenities or components, increase area vibrancy, and/or help meet sustainability goals.

A building in the GMU Zone can utilize up to two of the development incentive bonuses in Subsection 19.303.4.B.3.a. and Section 19.510, for a total of two stories or 24 ft of additional height, whichever is less. Buildings that elect to use both height bonuses for a 5-

story building are subject to Type III review per Subsection 19.911.7 Building Height Variance in the General Mixed Use Zone.

a. Residential

Buildings that devote at least one story or 25% of the gross floor area to residential uses are permitted one additional story or an additional 12 ft of building height, whichever is less.

b. Green Building

Project proposals that receive approvals and certification as identified in Section 19.510 are permitted one additional story or an additional 12 ft of building height, whichever is less.

c. Building Height Variance

Additional building height may be approved through Type III variance review, per Subsection 19.911.7 Building Height Variance in the General Mixed Use Zone.

19.312 NORTH MILWAUKIE INNOVATION AREA

19.312.7 Design Standards for All Uses in the MUTSA and on NME Key Streets

The following development standards apply to all uses in the MUTSA Zone and in the NME Zone on properties located on the following key streets and key corners: McBrod Avenue, Main Street, 17th Avenue, and Ochoco Street (see Figure 312.7.1).

A. Design Standards for All New Construction and Major Exterior Alterations

The design standards contained in this section are intended to encourage building design and construction with durable, high-quality materials. The design standards in this section apply to the street-facing façades of new, and major alterations to, commercial, institutional, manufacturing, and mixed-use buildings when the closest wall of the street-facing façade is within 50 ft of a front or street-side lot line. Exterior maintenance and repair and minor exterior alterations are not subject to these standards. Subsection 19.312.7.B below defines exterior maintenance and repair and major/minor exterior and interior alterations.

CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

19.501 GENERAL EXCEPTIONS

19.501.2 Yard Exceptions

C. A covered porch or deck on a single detached dwelling or middle housing unit may extend 6 ft into a required front or rear yard if all of the following standards are met:

1. The porch or deck is not enclosed on any side other than what is enclosed by the exterior walls of the dwelling. The following are not considered to be enclosures: structural supports for a covered porch, projections not extending more than 3 ft upward from the surface of the porch, railings, retractable sunshades, screens, or netting.
2. The surface of the porch or deck does not exceed 18 in high above the average grade.
3. The porch or deck is at least 5 ft from the front and/or rear lot line.

19.502 ACCESSORY STRUCTURES

19.502.2 Specific Provisions for Accessory Structures

A. The following standards apply for residential accessory structures on single detached unit, townhouse, cottage cluster, and plex development properties. The standards in Subsection 19.502.2.A do not apply to pools, uncovered decks, and patios.

The purpose of these standards is to allow accessory structures that accommodate the typical needs of a residence.

1. Development Standards

- b. Other Development Standards

- (3) A covered walkway or breezeway is allowed between a primary structure and accessory structure. Such connection shall not exempt the accessory structure from compliance with the standards of this section, unless the connection is fully enclosed and meets the building code definition of a conditioned space, and is all of the following, which results in an addition and is not an accessory structure:

2. Design Standards

- a. Metal siding is prohibited on structures more than 15 ft high or with a footprint greater than ~~200~~ 600 sq ft, unless the siding replicates the siding on the primary

dwelling or has the appearance of siding that is commonly used for residential structures.

19.505 BUILDING DESIGN STANDARDS

19.505.4 Cottage Cluster Housing

C. Development Standards

The standards listed below in Table 19.505.4.C.1 are the applicable development and design standards for cottage cluster housing. Additional design standards are provided in Subsection 19.505.1.

Table 19.505.4.C.1 Cottage Cluster Development Standards		
Standards	R-MD	R-HD
A. Structure Types		
1. Building types allowed, minimum and maximum number per cluster	Detached and Attached cottages 3 minimum 12 maximum dwelling units Maximum number of attached units = 3	Detached and Attached cottages 3 minimum 12 maximum dwelling units Maximum number of attached units = 4
B. Dwelling Unit Size		
1. Max building footprint per dwelling unit	900 sf	
2. Max average floor area per dwelling unit	1,400 sf	

E. Site Design and Other Standards

4. Off-Street Parking

f. Off-street parking may be arranged in clusters, subject to the following standards:

- (1) Cottage cluster projects with fewer than 16 cottages are permitted parking clusters of not more than five contiguous spaces.
- (2) Cottage cluster projects with 16 cottages or more are permitted parking clusters of not more than eight contiguous spaces.
- (3) Parking clusters must be separated from all other areas by at least 4 ft of landscaping.
- (4) Clustered parking areas may be covered.

g. Off-street parking spaces and vehicle maneuvering areas must not be located:

(1) Within of 20 ft from any street property line, except alley property lines;

(2) Between a street property line and the front façade of cottages located closest to the street property line. This standard does not apply to alleys.

(3) Off-street parking spaces must not be located within 10 ft of any other property line, except alley property lines. Driveways and drive aisles are permitted within 10 ft of other property lines.

h. Landscaping, fencing, or walls at least three feet tall must separate clustered parking areas and parking structures from common courtyards and public streets.

i. Garages and carports (whether shared or individual) must not abut common courtyards.

j. Individual attached garages up to 200 square feet must be exempted from the calculation of maximum building footprint for cottages.

k. Individual detached garages must not exceed 400 square feet in floor area.

l. Garage doors for attached and detached individual garages must not exceed 20 feet in width.

CHAPTER 19.600 OFF-STREET PARKING AND LOADING

19.602.3 Applicability for Development and Change in Use Activity

The provisions of Chapter 19.600 apply to development and changes of use as described in Subsection 19.602.3.

- A. Development of a vacant site shall have off-street parking and off-street loading areas that conform to the requirements of Chapter 19.600. Development of a site that results in an increase of 100% or more of the existing floor area and/or structure footprint on a site shall also conform to the requirements of Chapter 19.600. The construction of new off-street parking spaces may be subject to the electric vehicle charging requirements of Subsection 19.605.5. The floor area and/or footprint of structures demolished prior to development or redevelopment on the site shall not be considered when calculating the increase in floor area and/or structural footprints.

19.602.4 Applicability not Associated With Development or Change in Use

- A. Any parking or loading area developed to serve an existing use(s) that is not associated with development activity or a change in use described in Subsection 19.602.3 shall conform to the requirements of Sections 19.604 and 19.606-19.611, as well as to the electric vehicle (EV) charging requirements of Subsection 19.605.5 as applicable. The total number of

spaces in the existing parking area and new parking area shall not exceed the maximum allowed quantity of parking as established in Section 19.605.

- B. Any parking or loading area that is not developed to serve an existing use and is not associated with development activity or a change in use as described in Subsection 19.602.3 shall conform to the requirements of Sections 19.604 and 19.606-19.611. The requirements of Section 19.605 do not apply to parking areas described under Subsection 19.602.4.B.

19.605 Vehicle Parking Quantity Requirements

The purpose of Section 19.605 is to ensure that development provides adequate, but not excessive, vehicle parking based on their estimated parking demand. Subsection 19.605.1 establishes parking ratios for common land uses, and Subsection 19.605.3 allows certain exemptions and reductions to these ratios based on location or on-site amenities. Subsection 19.605.5 details requirements for installing electric vehicle (EV) charging infrastructure in multi-unit, mixed-use, commercial, and industrial developments. Modifications to the established parking ratios and determinations of parking requirements for unique land uses are allowed with discretionary review per Subsection 19.605.2.

19.605.5 Electric Vehicle (EV) Charging Requirements

Required EV charging spaces. All new buildings that are commercial, industrial, multi-unit with 5 or more dwelling units, or mixed-use with 5 or more dwelling units and that provide new off-street parking must include sufficient space for electrical service capacity to support at least a Level 2 EV charger at required EV charging spaces as outlined below. For terms not defined elsewhere in Title 19, see applicable sections of the state building code and/or OAR 918-460-0200.

- A. **Commercial and Industrial Buildings.** For new commercial and industrial buildings where new off-street parking spaces are constructed, choose one of the following:

- 1) At least 50% of the total number of newly constructed parking spaces must include electrical conduit adjacent to the spaces that will allow for the installation of at least a Level 2 EV charger;

OR

- 2) At least 20% of the total number of newly constructed parking spaces must include electrical conduit adjacent to the spaces that will allow for the installation of at least a Level 2 EV charger. At least 5% of newly constructed parking spaces must include an installed Level 2 or Level 3 EV charger. Parking spaces with installed chargers count toward the 20% minimum requirement.

- B. **Multi-Unit and Mixed-Use Residential Buildings.** For new multi-unit and mixed-use buildings with five or more dwelling units, where new off-street parking spaces are constructed, choose one of the following:

- 1) All (100%) of the newly constructed parking spaces must include electrical conduit adjacent to the spaces that will allow for the installation of at least a Level 2 EV charger;

OR

- 2) At least 40% of the total number of newly constructed parking spaces must include electrical conduit adjacent to the spaces that will allow for the installation of at least a Level 2 EV charger. At least 10% of newly constructed parking spaces must include an installed Level 2 or Level 3 EV charger. Parking spaces with installed chargers count toward the 40% minimum requirement.

C. **Structured Parking Facilities.** For new structured parking facilities, where new off-street parking spaces are constructed, choose one of the following:

- 1) At least 50% of the total number of newly constructed parking spaces must include electrical conduit adjacent to the spaces that will allow for the installation of at least a Level 2 EV charger;

OR

- 2) At least 20% of the total number of newly constructed parking spaces must include electrical conduit adjacent to the spaces that will allow for the installation of at least a Level 2 EV charger. At least 5% of newly constructed parking spaces must include an installed Level 2 or Level 3 EV charger. Parking spaces with installed chargers count toward the 20% minimum requirement.

CHAPTER 19.900 LAND USE APPLICATIONS

19.905 CONDITIONAL USES

19.905.9 Standards Governing Conditional Uses

G. Vacation Rentals

Operation of a vacation rental requires the following:

1. Prior to initial occupancy, the Building Official shall verify that building code and fire code standards are satisfied.
2. With annual filing of MMC Title 5 Business Tax, the operator shall send a notice to neighbors within 300 ft that includes the following information:
 - a. Property owner contact information;
 - b. Vacation rental operator and/or property manager contact information; and
 - c. City of Milwaukie Police nonemergency telephone number.