Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

03/28/2011

TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Milwaukie Plan Amendment
DLCD File Number 004-10

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, April 08, 2011

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Susan Shanks, City of Milwaukie
Gloria Gardiner, DLCD Urban Planning Specialist
Jennifer Donnelly, DLCD Regional Representative

<paa> YA

# FORM 2 DLCD Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

☐ In person ☐ electronic ☐ mailed

DATE STAMP

DEPT OF

MAR 2 1 2011

LAND CONSERVATION AND DEVELOPMENT

For Office Use Only

Jurisdiction: **City of Milwaukie**

Local file number: **ZA-10-02 & CPA-10-03**

Date of Adoption: **March 15, 2011**

Date Mailed: **March 18, 2011**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **X** Yes ☐ No Date: 12/10/2010

**X** Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

**X** Land Use Regulation Amendment

☐ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

The amendment package significantly modernizes and improves the effectiveness of Milwaukie's land use and development review regulations and procedures. It consolidates existing procedures into one location, improves their efficiency and clarity, and gives the City more tools to use during the land use and development review process. The package includes both zoning code and comprehensive plan text amendments. It also includes a complete restructuring of Title 19 to provide a better vehicle for implementing the proposed improvements to the City's review procedures.

Does the Adoption differ from proposal? Yes

- Chapter 19.1000 modified to include fifth review type (Type IV) that mirrors existing major quasi-judicial review process. Legislative review process renumbered as Type V. Other code sections updated as needed.
- Section 19.902 modified to allow Comprehensive Plan map amendments to be evaluated through either the Type IV quasi-judicial process or the Type V legislative process depending upon the geographic scope of the map amendments.
- Additional changes made for clarity and accuracy throughout.

Plan Map Changed from: **NA** to: **NA**

Zone Map Changed from: **NA** to: **NA**

Location: **NA** Acres Involved: **NA**

Specify Density: Previous: **NA** New: **NA**

Applicable statewide planning goals:

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| X | X | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

Was an Exception Adopted? ☐ YES **X** NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing? **X Yes** ☐ **No**

If no, do the statewide planning goals apply? ☐ **Yes** ☐ **No**

DLCD File No. 004-10 (18641) [16573]

If no, did Emergency Circumstances require immediate adoption? ☐ **Yes** ☐ **No**

**DLCD file No.** _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

All state, federal, and local governments and all special districts that own or lease property in the City of Milwaukie may be affected by the City's proposed code amendments to the extent that the proposal changes how the City conducts land use and development review.


Local Contact: **Susan P. Shanks** Phone: **(503) 786-7653** Extension:

Address: **6101 SE Johnson Creek Blvd** Fax Number: **503-774-8236**

City: **Milwaukie** Zip: **97206** E-mail Address: **shankss@ci.milwaukie.or.us**


# ADOPTION SUBMITTAL REQUIREMENTS

**This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)**

per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available.**
3. Send this Form 2 and **one complete paper copy** (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615 ).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845 ).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615 ).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST**
**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**
**635 CAPITOL STREET NE, SUITE 150**
**SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available.** If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail **plan.amendments@state.or.us**.

**ORDINANCE NO.** 2025

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE COMPREHENSIVE PLAN CHAPTER 1 AND 2, AND THE MILWAUKIE MUNICIPAL CODE TITLE 2 ADMINISTRATION AND PERSONNEL; TITLE 3 REVENUE AND FINANCE; TITLE 12 STREETS, SIDEWALKS, AND PUBLIC PLACES; TITLE 13 PUBLIC SERVICES; TITLE 14 SIGN ORDINANCE; TITLE 17 LAND DIVISION ORDINANCE; TITLE 18 FLOOD HAZARD REGULATIONS; AND TITLE 19 ZONING ORDINANCE, TO REVISE AND IMPROVE THE PROCESS FOR REVIEW AND APPROVAL OF LAND USE APPLICATIONS AND DEVELOPMENT PERMITS. LAND USE FILE ZA-10-02 AND CPA-10-03.**

**WHEREAS,** the City of Milwaukie desires to maintain a clear, efficient, and modern process for the review of land use applications and development permits; and

**WHEREAS,** the City conducted a Smart Growth Code Assessment in 2009, which identified areas in the Milwaukie Municipal Code that prevent fair and timely review of development proposals, do not allow for meaningful public involvement, and do not facilitate quality development; and

**WHEREAS,** the City Council approved Resolution #27-2010 to execute an intergovernmental agreement with the State of Oregon's Transportation Growth Management Program providing resources to the City to address problems identified by the Smart Growth Code Assessment; and

**WHEREAS,** the City has prepared amendments to the Comprehensive Plan and Municipal Code that address problems identified by the Smart Growth Code Assessment; and

**WHEREAS,** all property owners were notified of the amendments and opportunity for public input has been provided at multiple Planning Commission and City Council meetings and through the City website; and

**WHEREAS,** the Planning Commission and City Council have held duly advertised public hearings on the amendments, with notice provided per the requirements of the Milwaukie Municipal Code and Oregon Revised Statutes; and

**WHEREAS,** the City Council finds that the amendments will result in an improved land use application and development permit review process and in regulations that will provide fair and timely review of development proposals, allow for meaningful public involvement, and facilitate quality development; and

**WHEREAS,** the City Council finds that the amendments are extensive in scope and require 60 days from the date of adoption to put into effect.

**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. Reorganization. Chapters and sections within Title 19 Zoning Ordinance are renumbered as described in Exhibit B.

Section 3. Amendments. The Comprehensive Plan Chapter 1 and Chapter 2, and Milwaukie Municipal Code Title 2 Administration and Personnel; Title 3 Revenue and Finance; Title 12 Streets, Sidewalks, and Public Places; Title 13 Public Services; Title 14 Sign Ordinance; Title 17 Land Division Ordinance; Title 18 Flood Hazard Regulations; and Title 19 Zoning Ordinance are amended as decribed in Exhibit B (renumbering table for Title 19), Exhibit C (underline/striekout version), and Exhibit D (clean version).

Section 4. Effective Date. The amendments shall become effective 60 days from the date of adoption.

Read the first time on 3/1/11, and moved to second reading by 3:2 vote of the City Council.

Read the second time and adopted by the City Council on 3/15/11

Signed by the Mayor on 3/15/11

Jeremy Ferguson, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

City Attorney

Document6 (Last revised 09/18/07)

EXHIBIT A

## Recommended Findings in Support of Approval
## Land Use File ZA-10-02 & CPA-10-03

1. The City of Milwaukie proposes to amend various land use and development review regulations that are contained in Title 14 Sign Ordinance, Title 17 Land Division Ordinance, and Title 19 Zoning Ordinance of the Milwaukie Municipal Code (MMC) and Chapters 1 and 2 of the Milwaukie Comprehensive Plan (MCP). Minor code amendments are also proposed to Titles 2, 3, 12, 13, and 18. The land use applications for these amendments are ZA-10-02 and CPA-10-03.

2. The purpose of the proposed code amendments is to modernize and improve the effectiveness of the City's land use and development review process to provide fair and timely review of development proposals, allow for meaningful public involvement, and facilitate quality development. The majority of the amendments are to Title 19, with substantive amendments proposed to the following specific provisions:

   - Nonconforming Uses and Development (existing Chapter 19.800)
   - Amendments to Maps and Ordinances (existing Chapter 19.900)
   - Code Interpretations and Director Determinations (existing sections in Chapters 19.1000 and 19.800)
   - Conditional Uses (existing Chapter 19.600)
   - Development Review (NEW Application)
   - Extensions to Expiring Approvals (NEW Application)
   - Modifications to Existing Approvals (NEW Application)
   - Variances (existing Chapter 19.700)
   - Review Procedures (existing Chapter 19.1000)

   Additionally, amendments are proposed to the following two MCP chapters to coordinate with the proposed amendments to Title 19.

   - Chapter 1 Citizen Involvement
   - Chapter 2 Plan Review and Amendment Process

3. The proposed amendments are subject to the following provisions of the MMC and MCP:

   - MMC Chapter 19.900 Amendments
   - MMC Subsection 19.1011.5 Legislative Actions
   - MCP Chapter 2 Objective 1 Amending the Plan

4. Sections of the Milwaukie Municipal Code or Comprehensive Plan not addressed in these findings are found to be not applicable to the decision on this land use application.

5. Public notice was provided in accordance with MMC Subsection 19.1011.5 Legislative Actions.

6. Compliance with MMC Chapter 19.900 Amendments:

A. MMC Section 19.901 requires that amendments to the Milwaukie Zoning Ordinance be initiated by the City Council, Planning Commission, or by a property owner.

The amendments were initiated by the Planning Commission on January 25, 2011. City Council finds that this criterion is met.

B. MMC Section 19.902 Amendment Procedure

i) MMC Subsection 19.902.1.A requires that proposed amendments be heard at a public hearing and follow the procedures outlined in MMC Subsection 19.1011.5 Legislative Actions.

The Planning Commission held a public hearing on the proposed amendments on January 25 and February 8, 2011. A public hearing before City Council is scheduled on March 1, 2011. Public notice was provided in accordance with MMC Subsection 19.1011.5. City Council finds that this criterion is met.

ii) MMC Subsection 19.902.1.B establishes standards for providing notice to Metro of any proposed amendments to the City's Comprehensive Plan or Zoning Ordinance.

Metro was provided notice of the proposed amendments on January 14, 2011, which meets the 45-day notification requirement. An analysis demonstrating compliance with the Metro Urban Growth Management Functional Plan will be sent to Metro no later than fourteen days prior to the final City Council hearing on the proposed amendments. City Council finds that this criterion is met.

iii) MMC Subsection 19.902.1.D requires that the Planning Director forward the Planning Commission's recommendation to City Council within forty days of the final Planning Commission hearing on the proposed amendments.

The Planning Commission made a recommendation to adopt the proposed amendments at their final hearing on February 8, 2011, and the Planning Director forwarded the Commission's recommendation to Council on February 18, 2011, meeting the 40-day requirement. City Council finds that this criterion is met.

C. MMC Subsection 19.904.1 requires that proposals for amendments to the Milwaukie Zoning Ordinance provide written evidence that the following requirements are satisfied:

i) Applicable requirements of MMC Section 19.1003, which specify the form of petitions, applications, and appeals.

City staff submitted an application on the prescribed form. Because no development is proposed, the other portions of MMC Section 19.1003 are not applicable. City Council finds that this requirement is met.

ii) Reasons for requesting the proposed amendments.

The proposed amendments are needed to modernize and improve the effectiveness of the City's land use and development review process. This process is a basic and important City function that is meant to provide fair and timely review of development proposals, allow for meaningful public involvement, and facilitate quality development. The amendments are meant to ensure that the code remains current with best professional practices, complies with Metro and State requirements, and reflects the community's vision for how the land use and development review

process should work. The proposed amendments are intended to create a smart, flexible, and local code.

A smart code is one that contains everything it should and nothing it shouldn't. Its structure and procedures are easy to understand and follow, serving to help property owners and developers effectively manage their development projects. Its application approval criteria allow for an appropriate amount of analysis and discretion consistent with an application's level of review.

A flexible code is one that enables the City to meet all of its legal requirements for processing land use and development permit applications while not hampering its ability to facilitate quality development and maintain high service standards.

A local code is one that provides for meaningful public involvement in a way that reflects Milwaukie's character and that results in desired development consistent with the community's vision in the Comprehensive Plan.

City Council finds that this requirement is met.

iii) Explanation of how the proposed amendments are consistent with other provisions of this title.

The amendments to Titles 2, 3, 12, 13, 14, 17, 18 are proposed so as to be consistent with the amendments to Title 19. They are intended to ensure that all internal code references are consistent and accurate, all new and existing terms are clearly defined, and all affected code sections are appropriately located. City Council finds that this requirement is met.

iv) The approval criteria of MMC Section 19.905.

The applicable approval criteria of MMC Section 19.905 are addressed below.

D. MMC Section 19.905 contains the approval criteria for amendments to the Milwaukie Zoning Ordinance.

i) The proposed amendments must conform to applicable MCP goals, policies, and objectives and be consistent with City ordinances, Metro Urban Growth Management Functional Plan, and other applicable regional policies.

Compliance with Milwaukie Comprehensive Plan (MCP)

*Chapter 1 Goal Statement: To encourage and provide opportunities for citizens to participate in all phases of the planning process, to keep citizens informed and to open lines of communication for the sharing of questions, problems and suggestions regarding the Comprehensive Plan and land use regulations.*

The proposed amendments update, streamline, and strengthen the City's citizen involvement policies and procedures in a number of ways.

- They update the City's MCP citizen involvement policies to reflect advancements in technology (e.g. internet) and the breadth of communication strategies available to staff (e.g. mailings, meetings, television, newsletters, etc.) for involving citizens in the land use process. The existing policies are outdated and narrow in their approach to involving citizens in a meaningful way.

- They streamline the City's MCP citizen involvement procedures by moving them to the Zoning Ordinance so that all the legislative and quasi-judicial procedures for amending the Zoning Ordinance and Comprehensive Plan are in one place and are consistent with one another. Only the procedures are being moved; the updated citizen involvement policies will remain in the Comprehensive Plan.
- They strengthen the City's MMC citizen involvement procedures by codifying and expanding existing land use application referral practices to neighborhood district associations so that they are notified about and given as much time as possible to review and comment on development proposals in their neighborhood.
- They improve the City's MMC citizen involvement procedures by requiring more and better signage on properties where development is being proposed.
- They strengthen the City's MMC involvement procedures by providing the Planning Director with guidelines for involving the public in the legislative application review process.
- They augment the City's MMC citizen involvement procedures by adding a formal process for notifying neighbors and NDAs about the modification or extension of certain kinds of land use approvals.
- They augment the City's MMC citizen involvement procedures by adding land use review and public notice for certain kinds of development proposals that currently only require building permit approval and no public notice.

*Chapter 2 Goal Statement: Establish a Plan review and amendment process as a basis for land use decisions, provide for participation by citizens and affected governmental units, and ensure a factual base for decisions and actions.*

- The proposed amendments move the MCP plan amendment approval criteria to the Zoning Ordinance so that all the legislative approval criteria and procedures for amending the Zoning Ordinance and Comprehensive Plan are in one place and are consistent with each other.

*Chapter 4 Goal Statement for Residential Land Use and Housing Element: To provide for the maintenance of existing housing, the rehabilitation of older housing and the development of sound, adequate new housing while preserving and enhancing local neighborhood quality and identity.*

- The proposed amendments continue to allow alterations to existing nonconforming and conforming residential structures through an updated variance approval process that is designed to minimize impacts on neighbors while allowing for context-sensitive home improvements. The updated variance process is also more equitable for property owners and more efficient for staff to implement than the existing code provisions for home improvement exceptions and alterations to nonconforming structures.

*Chapter 4 Objective for Residential Land Use and Housing Element: To utilize lands in the City according to their relative measure of buildability.*

- The proposed amendments remove obstacles to reasonable development on properties with unusual characteristics or physical constraints through an updated variance approval process.

Compliance with City Ordinances

These findings demonstrate compliance with all applicable City ordinances.

Compliance with Functional Plan

As required by Metro Code Section 3.07.820.A, the City provided notice of the proposed amendments to Metro's Chief Operating Officer on January 14, 2011. The City will submit a report that demonstrates compliance with all applicable titles of the Metro Functional Plan at least 15 days prior to the City Council hearing on the proposed amendments.

City Council finds that this criterion is met.

ii) The anticipated development must meet the intent of the proposed zone.

The proposed code amendments are legislative in nature and do not involve a specific development proposal in a particular zone. City Council finds that this criterion is not applicable.

iii) The proposed code amendments will meet or can be determined to reasonably meet applicable regional, state, and federal regulations.

The proposed amendments will comply with all applicable regional and state regulations that apply to the land use and development review process. The proposed amendments will continue to comply with annexation processing requirements per Metro Chapter 3.09 and Oregon Revised Statutes (ORS) Chapter 222, and they will bring the City into compliance with ORS Chapters 197 and 227 regarding the processing of land use applications.

In addition to the ORS, one of the State's planning goals directs local jurisdictions to provide opportunities for citizen involvement throughout the planning process. The proposed amendments strengthen, clarify, and codify the City's policies and requirements for citizen involvement. Another State planning goal directs local jurisdictions to adopt implementing ordinances that conform to their comprehensive plan. These findings demonstrate that the proposed amendments comply with the Milwaukie Comprehensive Plan.

City Council finds that this criterion is met.

iv) The proposed code amendments demonstrate that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area.

The proposed code amendments are legislative in nature and do not involve a specific development proposal at a particular site. City Council finds that this criterion is not applicable.

v) The proposed code amendments are consistent with the functional classification, capacity, and level of service of the transportation system.

The proposed code amendments are legislative in nature and do not involve a specific development proposal at a particular site. City Council finds that this criterion is not applicable.

7. Compliance with MMC Subsection 19.1011.5 Legislative Actions:

   A. Public Notification. Publish a notice of a hearing once each week for two consecutive weeks in a newspaper of general circulation in the city. The second publication shall not be less than five days prior to the date of the hearing.

      The City has provided the required published notice. City Council finds that this requirement is met.

   B. Decision. The Planning Commission shall conduct a public hearing and shall make a decision based on compliance with the applicable goals and policies of the MCP. The Planning Commission shall prepare a recommendation to the City Council. If the Commission approves the proposal, a report and recommendation, including findings and conclusions, shall be forwarded to Council. The City Council shall conduct a public hearing.

      The Planning Commission conducted a public hearing on January 25 and February 8, 2011, and prepared a recommendation to City Council on February 8, 2011. City Council will review the Commission's recommendation at a public hearing. City Council finds that this requirement is met.

8. Compliance with MCP Chapter 2 Objective 1 Amending the Plan:

   All Comprehensive Plan amendments shall meet the following criteria:

   - *Public need for the change.*
   - *Public need is best satisfied by this particular change.*
   - *The change will not adversely affect the health, safety, and welfare of the community.*
   - *Conformance with the Comprehensive Plan, its goals, policies, and spirit.*
   - *Conformance with applicable Statewide Planning Goals.*
   - *Consistent with Metro Growth Management Functional Plan and applicable regional policies.*

   The proposed amendments to Chapter 1 of the Comprehensive Plan provide needed updates that reflect advancements in technology (e.g. internet) and the breadth of communication strategies available to staff (e.g. mailings, meetings, television, newsletters, etc.) for involving citizens in the land use process. The existing policies are outdated and narrow in their approach to involving citizens in a meaningful way.

   The proposed amendments to Chapter 2 of the Comprehensive Plan serve to reinforce the separate yet related purposes of the Comprehensive Plan and Zoning Ordinance. The Zoning Ordinance is meant to implement the Comprehensive Plan. It contains the approval criteria and procedures for all land use actions governed by the policies of the Comprehensive Plan. The existing procedures in the Comprehensive Plan for amending the plan are incomplete. By referencing the Zoning Ordinance and moving the approval criteria for amending the Comprehensive Plan into the Zoning Ordinance, all of the legislative and quasi-judicial approval criteria and procedures for amending the Zoning Ordinance and Comprehensive Plan are complete and consolidated in one place for ease of use.

   City Council finds that these criteria are met.

9. The proposed amendments were referred to various City departments, governmental agencies, neighborhood district associations (NDA), and stakeholders for review and comment. They were discussed at several Planning Commission (7 work sessions) and City

Council (3 work sessions) meetings and one NDA leadership meeting. Additionally, the most up-to-date draft of the proposed code amendments and commentary document was posted on the City's web site starting on December 14, 2010. Public comments received, including any City responses, are summarized in the staff report.

# Land Use and Development Review Amendments
# Zoning Ordinance (Title 19) Renumbering

It is proposed to restructure the entire Zoning Ordinance in conjunction with these amendments. The following table lists the proposed and current chapter/section numbers. Additional notations indicate chapters/sections that are "new," "amended," or "repealed and replaced."

(Proposed text amendments are shown in Exhibits C and D.)

| Proposed Chapter/Section Number | Current Chapter/Section Number[1] |
|---|---|
| **19.100 Introductory Provisions** | **19.101, 19.102, 19.200, 19.1100, and 19.1200 repealed and replaced** |
| **19.200 Definitions and Measurements** | |
| 19.201 Definitions | 19.103 amended |
| 19.202 Measurements | new |
| **19.300 Base Zones** | |
| 19.301 Residential Zone R-10 | |
| 19.302 Residential Zone R-7 | |
| 19.303 Residential Zone R-5 | |
| 19.304 Residential Zone R-3 | |
| 19.305 Residential Zone R-2.5 | |
| 19.306 Residential Zone R-2 | |
| 19.307 Residential Zone R-1 | 19.308 |
| 19.308 Residential-Business Office Zone R-1-B | 19.307 |
| 19.309 Residential-Office-Commercial Zone R-O-C | |
| 19.310 Downtown Zones | 19.312.1-6 amended |
| 19.311 Neighborhood Commercial Zone C-N | 19.310 |
| 19.312 Limited Commercial Zone C-L | 19.311 |
| 19.313 General Commercial Zone C-G | |
| 19.314 Community Shopping Commercial Zone C-CS | 19.315 amended |
| 19.315 Manufacturing Zone M | 19.314 amended |
| 19.316 Business Industrial Zone BI | 19.324 |
| 19.317 Planned Development Zone PD | 19.319 amended |
| REPEALED | 19.317 Reserved (empty) |
| **19.400 Overlay Zones** | |
| 19.401 Willamette Greenway Zone WG | 19.320 amended |
| 19.402 Water Quality Resource Regulations | 19.322 amended |
| 19.403 Historic Preservation Overlay Zone HP | 19.323 amended |
| 19.404 Mixed Use Overlay Zone MU | 19.318 |
| 19.405 Aircraft Landing Facility L-F | 19.316 |

[1] Same as proposed chapter/section number unless otherwise noted.

| Proposed Chapter/Section Number | Current Chapter/Section Number[1] |
|---|---|
| **19.500 Supplementary Development Regulations** | |
| 19.501 General Exceptions | 19.401 amended |
| 19.502 Accessory Structures | 19.402.1-2 amended |
| 19.503 Accessory Uses | 19.402.3 |
| 19.504 Site Design Standards | 19.403.2-9, 11-12, and 13.B (19.403.7 amended) |
| 19.505 Building Design Standards | 19.403.10 and 13.A |
| 19.506 Manufactured Dwelling Siting and Design Standards | 19.406 amended |
| 19.507 Home Occupation Standards | 19.407 |
| **19.600 Off-Street Parking and Loading** | |
| 19.601-19.611 | 19.501-19.511 |
| **19.700 Public Facility Improvements** | |
| 19.701-19.709 | 19.1401-19.1409 (19.1403.2 amended) |
| **19.800 Nonconforming Uses and Development** | **19.800 repealed and replaced** |
| **19.900 Land Use Applications** | |
| 19.901 Introduction | new |
| 19.902 Amendments to Maps and Ordinances | 19.900 repealed and replaced |
| 19.903 Code Interpretations and Director Determinations | 19.1001.4 and 19.809 repealed and replaced |
| 19.904 Community Service Uses | 19.321 amended |
| 19.905 Conditional Uses | 19.601-19.602.9 repealed and replaced |
| 19.906 Development Review | new |
| 19.907 Downtown Design Review | 19.312.7 amended |
| 19.908 Extensions to Expiring Approvals | new |
| 19.909 Modifications to Existing Approvals | new |
| 19.910 Residential Dwellings:<br>19.910.1 Accessory Dwelling Units (Type 1)<br>19.910.2 Accessory Dwelling Units (Type 2)<br>19.910.3 Manufactured Dwelling Parks<br>19.910.4 Temporary Dwelling Units | new introductory text<br>19.402.4 amended<br>19.602.10 amended<br>19.405<br>19.404 amended |
| 19.911 Variances | 19.700 repealed and replaced |
| **19.1000 Review Procedures** | **19.1000 repealed and replaced** |
| **19.1100 Annexations and Boundary Changes** | |
| 19.1101-19.1105 | 19.1501-19.1505 amended |
| **19.1200 Solar Access Protection** | |
| 19.1201-19.1205 | 19.1301-19.1305 amended |

# Underline/Strikeout Amendments

# Comprehensive Plan

## CHAPTER 1 CITIZEN INVOLVEMENT

### OBJECTIVE #3—COMMUNICATION

Promote informed public participation in planning decisions by providing readily available publications and printed materials regarding current issues and proposed policies and providing for two-way communication between policy-makers and citizens.

**Policies**

1. Make planning documents available through City offices and public libraries. This includes, but is not limited to Plan inventories, planning background information, Staff reports and minutes of Planning Commission and Comprehensive Plan Review Committee meetings.
2. Keep the public informed of opportunities for involvement in land use planning using a range of available media including newspaper notices, the City web site, mailings, the City newsletter, television, and meetings. ~~Advertise all public hearings regarding land use issues in the newspaper and on the local cable television station.~~
3. Seek citizens' input on major land use issues through community organizations, service organizations, interest groups, neighborhood groups, etc. Provide opportunities for citizen participation in preparing and revising local land use plans and ordinances. Provide citizen involvement opportunities that are appropriate to the scale of a given planning effort. Large area plans, affecting a large portion of community residents and groups, require citizen involvement opportunities of a broader scope than that required for more limited land use decisions. ~~Provide information concerning major land use issues by conducting one "town hall" meeting coordinated by City Staff a minimum of 10 days prior to the public hearing before the Planning Commission. Neighborhood Associations and identified community service or interest groups shall be notified of both "town hall" meetings and public hearings. A major land use change has widespread and significant impact beyond the immediate area, such as changes producing large volumes of traffic, changes in the character of the land use, or a change affecting large areas or many different ownerships.~~
4. City Staff will communicate with citizens about land use policy changes and significant development proposals through a variety of media early on and throughout the decision-making process. ~~issue a news release to local newspapers explaining upcoming issues which would result in changes to the Comprehensive Plan or its implementing ordinances prior to discussion of these issues at a public hearing~~.
5. Provide timely and public adequate notice of proposed land use matters to ensure that all citizens have an opportunity to be heard on issues and actions that affect them. ~~News releases and Planning Commission agendas will be provided to the City Library and community/senior center. These groups will be encouraged to include stories regarding planning issues in their newsletters.~~
6. Any citizen testifying at a public hearing regarding a land use issue will receive a copy of the outcome of the hearing and the findings and conclusions upon which the decision was based.

# CHAPTER 2 PLAN REVIEW AND AMENDMENT PROCESS

## OBJECTIVE #1—AMENDING THE PLAN

5. All proposed ~~legislative~~ Comprehensive Plan text and map amendments will be considered at advertised public hearings before the Planning Commission and City Council. ~~At least 30 days prior to a public hearing, a public notice shall be printed in a local newspaper and will appear on the public information cable television station. A second notice will appear at least ten days prior to the public hearing.~~

6. All Comprehensive Plan text and map amendments will be processed per the procedures in the Zoning Ordinance. ~~If the proposed amendment is quasi-judicial, notice of the requested change will be mailed to all residents within 400 feet of the property under consideration at least 30 days prior to the public hearing. Newspaper notice in accordance with the requirements for legislative plan amendments is also required.~~

7. All Comprehensive Plan text and map amendments will be evaluated based on the approval criteria in the Zoning Ordinance for approval of Comprehensive Plan amendments. ~~the following criteria:~~

   - ~~conformance with the Comprehensive Plan, its goals, policies, and spirit,~~
   - ~~public need for the change,~~
   - ~~public need is best satisfied by this particular change,~~
   - ~~the change will not adversely affect the health, safety, and welfare of the community,~~
   - ~~the change is in conformance with applicable Statewide Planning Goals,~~
   - ~~the change is consistent with Metro Growth Management Functional Plan and applicable regional policies.~~

# Municipal Code Title 19 Zoning

Proposed text amendments are shown below within the context of the restructured/renumbered Zoning Ordinance (as proposed in Exhibit B).

Underline/strikeout formatting is used only for proposed changes to text, not for proposed renumbering. (Where noted, new or rewritten complete chapters, and some large sections, are not underlined, for better readability.)

(The complete, amended and reorganized Zoning Ordinance, as proposed, is shown in its entirety in Exhibit D.)

## ENTIRE ZONING ORDINANCE

- Change "submission" to "submittal."
- Change "site plan checklist" to "site plan requirements."

## CHAPTER 19.100 INTRODUCTORY PROVISIONS

[Current Sections 19.101 and 19.102, and Chapters 19.200, 19.1100, and 19.1200 repealed and replaced as Chapter 19.100. Complete chapter below—no underlining.]

### 19.101 TITLE

This title shall be known and may be cited as the Zoning Ordinance of the City of Milwaukie, Oregon. This title and any amendments to it shall be adopted by ordinance. Amendments to this title shall be subject to the provisions of Section 19.902.

### 19.102 PURPOSE

This title implements the Comprehensive Plan, which provides the policy framework within which land use and development review is conducted in the city. Amendments to the Comprehensive Plan shall be subject to the provisions of Section 19.902.

The purpose of this title is to provide for the public health, safety, and general welfare of the citizens of the City through orderly community development including, but not limited to, consideration for concentration of population; economic development; sustainability; limitation of dangerous, offensive, or unwholesome trades or industries; maintenance of adequate light and air; and regulation of traffic.

### 19.103 APPLICABILITY

This title applies to all land, uses, and development within the corporate limits of the City of Milwaukie. It does not apply to temporary events as defined and provided for in Chapter 11.04.

### 19.104 INTERPRETATION

The Planning Director shall have the authority and responsibility for interpreting all terms, provisions, and requirements of this title. Unless specifically defined in Section 19.201, words or phrases used in this title are intended to be interpreted with the meaning they have in common usage. Requests for interpretations may be made as described and provided for in Section 19.903.

## 19.105 SEVERABILITY

The provisions of this title are severable. If any section, sentence, clause, or phrase of this title is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this title.

## 19.106 COMPLIANCE

Development may occur, a lot may be used, and a structure or part of a structure may be constructed, reconstructed, altered, occupied, or used only as this title permits. Where this title imposes greater restrictions than those imposed or required by other rules, regulations, or ordinances, the provisions of this title shall control. Where comparable provisions of this title are in conflict, the provisions that are the most restrictive shall control.

### 19.106.1 Land Use Approvals

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval of all required land use applications prior to establishment or construction. Table 19.901 contains a complete list of the City's land use applications and the locations of the provisions that govern their submittal, review, and approval. Chapter 19.1000 contains the City's land use review procedures.

### 19.106.2 Permit Approvals

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval of all required development permits prior to establishment or construction.

A. The Planning Director shall review applications for development and sign permits for compliance with applicable code provisions.

B. The Planning Director may approve or deny applications for development and sign permits based on consistency with applicable code provisions.

C. All development authorized by approved development and sign permits shall be in substantial conformance with plans approved by the Planning Director.

D. Buildings for which permits have been issued shall not be occupied without prior occupancy approval in accordance with this subsection.

E. Final occupancy approvals shall not be issued until completion of final zoning inspections and issuance of notice of completion by the Planning Director. Approval criteria for issuance of notice of completion includes all of the following:

   1. A written statement from the applicant that all improvements have been constructed in accordance with approved plans, except as modified and approved by appropriate approval authorities.

   2. Completion of zoning inspection by the Planning Director and confirmation that the project is in substantial conformance with approved plans.

   3. Payment of the final zoning inspection fee, as adopted by the City Council.

F. The Planning Director shall complete the final zoning inspection within 5 working days from receipt of the applicant's request for final zoning inspection.

### 19.106.3 Violations

A. A person violating a provision of this title shall, upon conviction, be punished by imprisonment for not more than 30 days, or by a fine of not more than $200, or both. A violation of this title shall be considered a separate offense for each day the violation continues. If the violation was of a provision that was repealed or amended, the violation shall remain a violation to the extent that it does not conform to the provisions of this title.

B. In case a building or land is located, constructed, maintained, repaired, altered, or used in violation of this title, the building or land in violation shall constitute a nuisance, and the City may, as an alternative to other remedies that are legally available for enforcing this title, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, enjoin temporarily or permanently, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use.

## 19.107 ZONING

### 19.107.1 Zone Classifications

For the purposes of this title, the following base zones and overlay zones are established in the City per Table 19.107.1:

**Table 19.107.1**
**Classification of Zones**

| Zone Description | Abbreviated Description |
|---|---|
| **Base Zones** | |
| Residential | R-10 |
| Residential | R-7 |
| Residential | R-5 |
| Residential | R-3 |
| Residential | R-2.5 |
| Residential | R-2 |
| Residential | R-1 |
| Residential-Business Office | R-1-B |
| Residential-Office-Commercial | R-O-C |
| Downtown Storefront | DS |
| Downtown Commercial | DC |
| Downtown Office | DO |
| Downtown Residential | DR |
| Downtown Open Space | DOS |
| Neighborhood Commercial | C-N |
| Limited Commercial | C-L |
| General Commercial | C-G |
| Community Shopping Commercial | C-CS |
| Manufacturing | M |
| Business Industrial | BI |
| Planned Development | PD |

| Table 19.107.1 CONTINUED Classification of Zones | |
|---|---|
| Zone Description | Abbreviated Description |
| **Overlay Zones** | |
| Willamette Greenway | WG |
| Water Quality Resource | WQR |
| Historic Preservation | HP |
| Mixed Use | MU |
| Aircraft Landing Facility | L-F |

### 19.107.2 Zoning Map

The zones described in Subsection 19.107.1 above are displayed on a zoning map entitled "Zoning Map of Milwaukie, Oregon." The Zoning Map shall be dated with the effective date of the ordinance that adopted the Zoning Map and the effective date of the ordinance that most recently amended the map. A certified copy of the map and map amendments, shall be maintained in the offices of the City Planning Department.

### 19.107.3 Zoning Map Amendments

Zoning Map amendments are subject to the provisions of Section 19.902. The procedures for processing a Zoning Map amendment application are located in Chapter 19.1000.

### 19.107.4 Zone Boundary Determinations

The exact location of a zone boundary shall be determined by the Planning Director where there is uncertainty, contradiction, or conflict as to the intended location of any zone boundary due to the scale, lack of detail, or illegibility of the Zoning Map. The determination shall be in accordance with the following guidelines:

A. Street Lines

Where zone boundaries are shown as approximately following the centerline of a right-of-way, such centerlines shall be construed to be the zone boundaries.

B. Lot Lines

Where zone boundaries are shown as approximately following lot lines, such lot lines shall be construed to be the zone boundaries.

C. Water Courses

Where zone boundaries are shown as approximately following the centerline of water courses, such lines shall be construed to be the zone boundaries unless such boundaries are otherwise fixed by dimensions described elsewhere in this title.

If a property owner disagrees with the Planning Director's initial determination, a formal determination request may be made as described and provided for in Section 19.903.

### 19.107.5 Zoning of Lots with Multiple Zones

If a zone boundary for a base zone in Chapter 19.300, as shown on the Zoning Map, divides a lot between 2 or more base zones, the entire lot shall be deemed to be in the base zone in which the greater area of the lot lies, provided that this adjustment involves a distance not to

exceed 20 ft from the mapped base zone boundary. If an adjustment exceeds 20 ft, the regulations for the base zones shall apply to the lot as depicted on the Zoning Map.

### 19.107.6 Zoning of Annexed Areas

Land annexed to the City shall be assigned a land use and zoning designation that is consistent with the land use designations established by the Comprehensive Plan and the zones established by this title at the time of annexation. Annexations shall be adopted by ordinance pursuant to Chapter 19.1100.

### 19.107.7 Zoning of Public Right-of-Way

The zones applied to the public rights-of-way within the City boundaries as shown on the Zoning Map do not directly regulate the improvements or structures that are allowed in these rights-of-way. Improvements and structures in public rights-of-way are regulated by other rules, regulations, and ordinances maintained by the City and other road authorities, such as Chapter 19.700, Public Works Standards, and the Transportation System Plan.

## CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

[Section 19.103 renumbered as 19.201 and new Section 19.202 added. Only amended text is shown below. See Exhibit D for complete chapter.]

### 19.201 DEFINITIONS

"Basement" means a portion of a building, not deemed a story, which has more than half its interior height (but not more than 6 ft) ~~measured from finished floor to finished ceiling~~ above the adjoining ground-level grade.

"Building height" means the exterior vertical measurement of a building. ~~distance measured from the adjoining street centerline grade, as established by the City, to the highest point of the roof surface of a flat roof, to the deck line of a mansard roof, and to the mean height level between the eaves and ridge for a gable, hip, or gambrel roof; provided, however, that where buildings are set back from the street line, the height of the building may be measured from the average elevation of the finished grade at the front of the building.~~

"Cellar" means a room or group of rooms, usually under a building, which has more than half its interior height ~~measured from finished floor to finished ceiling~~ below the average grade of the adjoining ground.

"Contract purchaser" means the party identified as the buyer in a land contract that is in force and is recorded with Clackamas County.

"Discontinued or abandoned use" means a use that is no longer in operation. A use shall be considered discontinued or abandoned upon the first day that any of the following events has occurred: (1) the use physically vacates the site, (2) the use ceases to be actively involved in the activity, (3) any lease or contract under which the use has occupied the land is terminated, or (4) a request for final reading of water and power meters is made to the applicable utility districts.

**"Dwelling unit," "Accessory dwelling,":**

"Type 1 accessory dwelling" means an accessory dwelling unit not less than 225 sq ft net ~~gross~~ floor area and not more than 600 sq ft net ~~gross~~ floor area and meeting the requirements of Subsection 19.910.1. For the purpose of this chapter, net ~~gross~~ floor area is measured from the inside face of walls enclosing the unit including all storage space, closets, halls, stairwells, and rooms.

"High-impact nonconforming use" means any use that is a nonconforming high-impact commercial business in any zone or any use that is a nonconforming industrial use in any zone. Nonconforming use, as defined below, means a lawful existing use that does not conform to the City's current land use ordinances, either because it was established prior to the enactment of City ordinances governing the use, or because the use conformed at the time it was established but applicable City ordinances have since changed.

"Lot coverage" means the footprint of a building(s) ~~or buildings~~ on a lot, measured from the outermost projection of the building(s)~~structure~~, expressed as a percentage of the total lot area.

"Low-impact nonconforming use" means any use that is a nonconforming residential use in any zone.

"Minimum vegetation" means the area of a lot that supports vegetation, including planting areas under roof eaves, expressed ~~plantings or natural growth, grass, shrubs, measured~~ as a percentage of the total lot area ~~including planted areas under roof eaves~~.

"Nonconforming development" means a lawful structure or site improvement, such as an off-street parking facility, landscaping, or accessway, that does not conform to the City's current development ordinances, either because it was established prior to the enactment of City ordinances governing the structure or improvement, or because the structure or improvement conformed at the time it was established but applicable City ordinances have since changed.

"Nonconforming ~~structure or~~ use" means a lawful existing ~~structure or~~ use~~, at the time the ordinance codified in Chapter 19.100 or any amendment thereto becomes effective, which~~ that does not conform to the ~~requirements of the zone in which it is located.~~ City's current land use ordinances either because it was established prior to the enactment of City ordinances governing the use or because the use conformed at the time it was established but applicable City ordinances have since changed.

"Yard" means an open space on a lot which is unobstructed from the ground upward except as otherwise provided in this title.

"Front yard" means a yard between side lot lines, ~~and~~ measured horizontally and at right angles to the front lot line from the front lot line to the nearest point of the building.

"Rear yard" means a yard between side lot lines or between a street side yard and opposite side lot line, ~~and~~ measured horizontally and at right angles to the rear lot line from the rear lot line to the nearest point of the ~~a main~~ building.

"Side yard" means a yard between the front and rear yards, measured horizontally and at right angles from the side lot line to the nearest point of the building.

"Street side yard" means a yard adjacent to a street between the front ~~yard~~ and ~~the~~ rear yards ~~lot line~~, measured horizontally and at right angles from the side lot line to the nearest point of the building.

## 19.202 MEASUREMENTS

### 19.202.1 Horizontal Measurements

All horizontal distances for yard widths and lot and building dimensions shall be measured along a horizontal plane from the appropriate property line, edge of building, structure, storage area, parking area, or other object. These distances shall not be measured by following the topography of the land.

### 19.202.2 Vertical Measurements

A. Interior Height

Floor-to-ceiling height shall be measured from the top of the floor finish to the bottom of the ceiling joists or, where there is no ceiling, to the bottom of the roof rafters.

B. Exterior Height

Except where otherwise specified in Title 19, building height shall be measured from the adjoining street centerline grade, as established by the City, to the highest point of the roof surface of a flat roof, to the deck line of a mansard roof, or to the mean height between the eaves and the ridge for a gable, hip, or gambrel roof. Where the building is set back from the street, building height may be measured from the average elevation of the finished grade at the front of the building.

# CHAPTER 19.300 ~~USE~~ BASE ZONES

[Current Chapter 19.300 split into Chapters 19.300 Base Zones and 19.400 Overlay Zones, with both chapters restructured for more logical order. Only amended text is shown below. See Exhibit D for complete chapter.]

## 19.308 RESIDENTIAL-BUSINESS OFFICE-~~COMMERCIAL~~ ZONE R-1-B

## 19.310 DOWNTOWN ZONES

**NOTE:** The C-L Zone in Riverfront Park just south of Johnson Creek (southerly portion of Tax Lot 1S1E35AA04600) was changed to Downtown Open Space by Ordinance 1981**. Figure 19.310-1 Downtown Zoning is amended to reflect the zone change adopted by that ordinance.**

### 19.310.3 Uses

F. Similar Uses

The Planning Director, through a Type I ~~Administrative~~ review, may determine that a use that is not listed is considered similar to a listed use in Table 19.310.3. The unlisted use shall be subject to the standards applicable to the similar listed use.

### 19.314.3 Application Review; Minimum Requirements

E. Detailed traffic report, analyzing existing traffic, traffic generation, turning movements, and impact on adjacent streets. Report shall recommend roadway improvements needed to mitigate impacts as specified in Chapter 19.700. The application shall be reviewed under ~~Minor Quasi-judicial~~ Type III review procedures as provided in Section 19.1006;

~~**19.315.4 Authority and Appeal of Administrative Decisions**~~

~~If the Planning Director has any questions regarding the applicant's ability to meet the criteria in Subsection 19.315.1, the request may be scheduled for review by the Planning Commission. In addition, a member of the public may appeal a use administratively approved or denied by the Planning Director to the Planning Commission. See Section 19.1001 for appeal procedures.~~

**19.315.5 Site Development Requirements**

F. Transition Area

~~When the~~ Industrial development ~~is~~ adjacent to and within 120 ft of areas zoned for residential uses is subject to Type I or II review per Section 19.906 Development Review.~~,~~ ~~t~~ The following characteristics will be considered:

1. Noise
2. Lighting
3. Hours of operation
4. Delivery and shipping
5. Height of structure
6. Distance to residential zone boundary

The ~~Commission~~ review authority may attach conditions to reduce any potentially adverse impacts to residential properties.

**19.317.10 Planning Commission Action on Final Development Plan and Program**

A. Upon receipt of the final development plan and program, zone change application, and preliminary subdivision plat, where applicable, notice shall be given and the Planning Commission shall hold a public hearing ~~per Subsection 19.1011.4 Major Quasi-judicial Review.~~ per Section 19.1007 Type IV Review. If the final development plan and program is found to be in compliance with previous approval and with the intent and requirements of this title, it shall recommend the same, together with appropriate documents and conditions, to the City Council for adoption.

**19.317.11 Council Action on Final Development Plan and Program**

A. Upon receipt of Planning Commission recommendations as set forth above, the final development plan and program and zone change application shall be considered by the City Council per Section 19.1007 Type IV Review.

**19.317.16 Expiration of Planned Development Zone**

If, within 6 months of its effective date, substantial construction or development in the PD Zone has not occurred in compliance with the approved final development plan and program and schedule for stage completion, the Planning Commission may initiate a review of the PD Zone and hold a public hearing to determine whether its continuation in whole or in part is in the public interest. Notification and hearing shall be in accordance with ~~Subsection 19.1011.4 Major Quasi-judicial Review of the Zoning Ordinance~~ Section 19.1007 Type IV Review. If found not to be, the Planning Commission shall recommend to the City Council that the PD Zone be removed by appropriate amendment to the Zoning Ordinance and property changed back to original zoning.

# CHAPTER 19.400 OVERLAY ZONES

[Current Chapter 19.300 split into Chapters 19.300 Base Zones and 19.400 Overlay Zones, with both chapters restructured for more logical order. Only amended text is shown below. See Exhibit D for complete chapter.]

### 19.401.5 Procedures

The following procedures shall govern the application of WG Zones:

B. The Oregon Department of Transportation shall be notified ~~according to the provision of Subsection 19.1011.3.D~~ of a hearing on a conditional use in the Willamette Greenway Zone. The notice shall be sent via "certified mail, return receipt requested."

### 19.402.7 Activities Permitted Under ~~Minor Quasi-judicial~~ Type III Review

### 19.402.9 Application Requirements

Applications for Type II and III ~~Minor Quasi-judicial~~ review shall provide the following information in addition to the information required for the base zone:

### 19.402.12 Map Administration

B. Map Corrections, Deletions

1. Improperly mapped water features shown on the Milwaukie Water Quality Resource Area Maps may be deleted by Type II ~~Administrative~~ review in accordance with Section 19.1005 subject to the following criteria:

### 19.403.4 Process for Designation or Deletion of a Landmark

A. Application Request

The owner of record, contract purchaser, or an agent of any of the foregoing, of property within the City may make application for resource designation or deletion. The application shall be in such form and detail as the Planning Director prescribes and processed per Section 19.1007 Type IV Review ~~will be the same as the Major Quasi-judicial review process of Subsection 19.1011.4 of this title~~. The application shall be submitted to the Planning Director. The Planning Commission or the City Council may also initiate such proceedings on their own motion.

# CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

[Current Chapter 19.400 renumbered as Chapter 19.500 (except Subsection 19.402.4 and Sections 19.404 and 19.405 moved to Section 19.910 Residential Dwellings—see below). Only amended text is shown below. See Exhibit D for complete chapter.]

### 19.501 GENERAL EXCEPTIONS

The exceptions listed in Subsections 19.501.1–4 below are "by right" exceptions. "By right" exceptions are either automatically required or allowed outright and require no special review or approval by the City to implement.

**19.502.2 Single-Family Residential Provisions, Subsection B.1:**

b. Commercial Zones

Maximum height 6 ft. No electrified wire is permitted. Barbed or razor wire may be permitted for security purposes on top of a maximum height fence, following a Type II ~~Administrative~~ review ~~as~~ per Section 19.1005 in which a determination has been made that the proposed fencing will not adversely impact the health, safety, or welfare of adjacent property occupants. All outdoor storage shall require a 6-ft-high sight-obscuring fence.

c. Industrial Zones

Maximum height 8 ft. No electrified wire is permitted. Barbed or razor wire may be permitted for security purposes on top of a maximum height fence, except where such fencing is proposed adjacent to residential zones or residential uses, in which case such may be allowed following a Type II ~~Administrative~~ review ~~as~~ per Section 19.1005 in which a determination has been made that the proposed fencing will not adversely impact the health, safety, or welfare of adjacent property occupants. All outdoor storage shall require a sight-obscuring fence with a minimum height of 6 ft.

**19.504 SITE DESIGN ~~PROVISIONS~~ STANDARDS**

**19.504.6 Transition Area Measures**

~~In zones where multifamily, commercial, or industrial projects are proposed that are within 100 feet of areas designated for lower density, transition measures shall be applied in order to minimize the impact on lower density uses. The downtown zones are exempt from this subsection. The transition measures shall be subject to Planning Commission review at a public hearing per Subsection 19.1011.3 Minor Quasi-judicial Review, and shall include one or a combination of the following. The Planning Commission may apply conditions to such approval as will meet the objectives of this subsection.~~

~~A. Roadways separating projects.~~

~~B. Open areas (developed or undeveloped) separating new structures from adjacent parcels. A minimum distance equal to the required front yard of adjacent parcels will be established and maintained as open area. Natural vegetation, landscaping, or fencing will be provided to the 6-foot level to screen living rooms from direct view across open areas.~~

~~C. Gradual Density Changes~~

~~A new project may not have a density greater than 25% of the allowable density on lower-density residential parcels abutting the project. If abutting parcels have a variety of allowable residential densities, parcels with similar allowable densities abutting the highest percentage of the project perimeter will govern.~~

Where multifamily, commercial, or industrial development is proposed adjacent to properties zoned for lower-density residential uses, the following transition measures shall be required. These additional requirements are intended to minimize impacts on lower-density residential uses. The downtown zones are exempt from this subsection.

A. All yards that abut, or are adjacent across a right-of-way from, a lower-density zone shall be at least as wide as the required front yard width of the adjacent lower-density zone. This additional yard requirement shall supersede the base zone yard requirements for the development property where applicable.

B. All yards that abut, or are adjacent across a right-of-way from, a lower-density zone shall be maintained as open space. Natural vegetation, landscaping, or fencing shall be provided to the 6-ft level to screen lower-density residential uses from direct view across the open space.

## 19.505 BUILDING DESIGN ~~PROVISIONS~~ STANDARDS

## 19.506 MANUFACTURED DWELLING ~~PLACEMENT~~ SITING AND DESIGN STANDARDS

### 19.506.1 Purpose

This section is intended to meet State legislative requirements for the placement and design of manufactured homes on individual lots ~~and to provide standards for unit placement~~.

### 19.506.2 Applicability

Manufactured homes placed on individual lots are subject to the provisions of this section. ~~Treatment of manufactured homes by zones is shown in Table 19.506:~~

**~~Table 19.506~~**
**~~Manufactured Dwelling Placement by Zone~~**

| ~~Zone~~ | ~~Permitted Outright~~ | ~~Conditional Use~~ | ~~Temporary Permit~~ | ~~Manufactured Home Subdivision~~ |
|---|---|---|---|---|
| ~~R-10~~ | ~~X~~ | | ~~X~~ | ~~X~~ |
| ~~R-7~~ | ~~X~~ | | ~~X~~ | ~~X~~ |
| ~~R-5~~ | ~~X~~ | | ~~X~~ | ~~X~~ |
| ~~R-3~~ | ~~X~~ | | ~~X~~ | ~~X~~ |
| ~~R-2.5~~ | ~~X~~ | | ~~X~~ | ~~X~~ |
| ~~R-2~~ | ~~X~~ | | ~~X~~ | ~~X~~ |
| ~~R-1-B~~ | ~~X~~ | | ~~X~~ | ~~X~~ |
| ~~R-1~~ | ~~X~~ | | ~~X~~ | ~~X~~ |
| ~~R-O-C~~ | ~~X~~ | | ~~X~~ | ~~X~~ |

### 19.506.3 Definitions

### 19.506.4 Siting Standards

Manufactured homes are allowed outright in any zone that allows single-family detached dwellings outright. Manufactured homes placed on individual lots shall meet the following standards:

### 19.506.6 Occupancy ~~of Units~~

Manufactured homes placed on individual lots shall comply with all siting standards of Subsection 19.506.4 before being approved for occupancy. ~~All approval and siting standards of this section shall be complied with before a manufactured home placed on an individual lot may be approved for occupancy.~~

### ~~19.506.7 Review Process~~

~~A. Siting standards of this section shall be reviewed as part of the building review procedures of Subsection 19.1011.1.~~

~~B. Subdivision processes and procedures are contained in Title 17 Land Division.~~

### 19.507 HOME OCCUPATION ~~PROVISIONS~~ STANDARDS

## CHAPTER 19.600 OFF-STREET PARKING AND LOADING

[Current Chapter 19.500 renumbered as Chapter 19.600. No amendments. See Exhibit D for complete chapter.]

## CHAPTER 19.700 PUBLIC FACILITY IMPROVEMENTS

[Current Chapter 19.1400 renumbered as Chapter 19.700. Only amended text is shown below. See Exhibit D for complete chapter.]

### 19.703.2 Application Submittal

For all proposed development that is subject to Chapter 19.700 per Section 19.702, one of the following types of applications is required.

A. Development Permit Application

If the proposed development does not require a land use application, compliance with Chapter 19.700 will be reviewed as part of the development permit application submittal.

B. Transportation Facilities Review (TFR) Land Use Application

If the proposed development triggers a transportation impact study (TIS) per Section 19.704, a TFR land use application shall be required. Compliance with Chapter 19.700 will be reviewed as part of the TFR application submittal and will be subject to a Type II review process as set forth in Chapter 19.1000. The TFR application shall be consolidated with, and processed concurrently with, any other required land use applications.

If the proposed development does not trigger a TIS per Section 19.704, but does require the submittal of other land use applications, compliance with Chapter 19.700 will be reviewed during the review of the other land use applications.

~~C. Non-TFR Land Use Application~~

~~If the proposed development requires a land use application but does not trigger a TIS per Section 19.704, compliance with Chapter 19.700 will be reviewed as part of the land use application submittal, pursuant to the review procedures associated with that land use application as set forth in Chapter 19.1000.~~

## CHAPTER 19.800 NONCONFORMING USES AND DEVELOPMENT

[Current Chapter 19.800 repealed and replaced. Complete chapter below—no underlining.]

### 19.801 PURPOSE

Nonconforming uses and development are uses and development that do not conform to the City's current land use and development regulations either because they were established prior

to the enactment of such regulations or because they conformed at the time they were established but applicable City regulations have since changed.

Most nonconforming uses and development may be maintained, but may not be altered, without land use review. Nonconforming uses and development may be rebuilt if destroyed in some instances. In general, however, nonconforming uses and development shall be brought into conformance with applicable land use and development regulations when redevelopment occurs. In particular, the City does not support the continuation of high-impact nonconforming uses in perpetuity.

## 19.802 GENERAL PROVISIONS

### 19.802.1 Nonconforming Uses and Development

A specific site may be nonconforming because it contains a nonconforming use, nonconforming development, or both, as defined in Section 19.201. Determination of the legal status of a nonconforming use or development may be requested by the property owner pursuant to Section 19.903.

### 19.802.2 Provisions

The following provisions apply to all nonconforming uses and development:

A. Changes in ownership may occur and do not affect the status of a nonconforming use or development.

B. A nonconforming use or development is allowed to change to a conforming use or development. Once a conforming use or development occupies the site, the nonconforming status is lost and the nonconforming use or development may not be reestablished.

C. Routine maintenance and repair, as defined in Section 19.201, is allowed. Alteration, as defined in Section 19.201 and further described in Section 19.804, or destruction, as described in Section 19.805, may require land use review and/or may result in the loss of the nonconforming status of the use or development.

D. Where other sections of the Milwaukie Municipal Code require nonconforming uses or development to come closer to conformance, those provisions apply instead of the provisions of this chapter.

E. Provisions of this chapter do not apply to signs. Nonconforming signs are regulated by Title 14 Signs.

## 19.803 CONTINUATION OF NONCONFORMING USES AND DEVELOPMENT

### 19.803.1 Provisions

A nonconforming use or development may continue indefinitely pursuant to the provisions in Subsection 19.802.2 unless it is discontinued as described in this section, altered as described in Section 19.804, destroyed as described in Section 19.805, or amortized as described in Section 19.806.

### 19.803.2 Loss of Nonconforming Use Status

If a nonconforming use is discontinued or abandoned, as defined in Section 19.201, for more than 1 year, the site will lose its nonconforming status and any subsequent use on the site shall conform to all applicable land use and development regulations.

## 19.804 ALTERATION OF NONCONFORMING USES AND DEVELOPMENT

### 19.804.1 Nonconforming Uses

A. Provisions

The following provisions apply to the alteration of nonconforming uses:

1. A nonconforming use shall not be moved, in whole or in part, to any portion of the site other than that occupied by the nonconforming use, except as allowed per Subsection 19.804.1.B.1.
2. No additional development or physical alterations associated with the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1. Additional development or physical alterations not associated with the nonconforming use and that conform to Title 19 are allowed.
3. No intensification of the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1. Alterations that decrease the intensity of the nonconforming use are allowed.

B. Land Use Review Required

1. A nonconforming use shall not be moved, altered, or intensified unless such move, alteration, or intensification is approved by the Planning Commission through a Type III review per Section 19.1006. The applicant shall demonstrate that the proposed move, alteration, or intensification would result in no more of a detriment to surrounding properties than the existing nonconforming use.
2. If a nonconforming use involving a structure is replaced by another use, the new use shall conform to Title 19 unless the Planning Commission determines that such structure is suitable only for another nonconforming use through a Type III review per Section 19.1006. The applicant shall demonstrate that the new nonconforming use would be no more detrimental to surrounding properties than the one it is replacing.

### 19.804.2 Nonconforming Development

The following provisions apply to the alteration of nonconforming development:

A. Alterations or expansions that increase or extend the nonconformity are not allowed unless a variance is approved pursuant to Section 19.911.

B. Alterations or expansions that conform to Title 19 are allowed. For example, development that does not conform to height, yard requirements, or lot coverage may be altered provided that the alteration does not exceed the height, yard requirements, or lot coverage requirements of Title 19.

## 19.805 REBUILDING OF NONCONFORMING USES AND DEVELOPMENT

### 19.805.1 Provisions

The following provisions establish when a nonconforming use or development may be reestablished or rebuilt following its intentional or accidental destruction:

A. When a nonconforming use or development is intentionally destroyed to an extent less than or equal to 50% of its replacement value, restoration is allowed. The restoration shall not result in an increase in the nonconformance of the use or development.

B. When a nonconforming use or development is intentionally destroyed to an extent exceeding 50% of its replacement value, restoration of the use or development shall conform to all applicable land use and development regulations.

C. If a nonconforming use or development is partially or totally destroyed by fire or other causes or natural hazards beyond the control of the owner, the use or development may be restored or replaced. The restoration or replacement shall not be more out of conformance with the land use or development regulations than the original use or development.

### 19.805.2 Loss of Nonconforming Status

Restoration or replacement of nonconforming uses or development that have been partially or totally destroyed, whether intentional or by accident, must commence within 1 year from the date of destruction. If restoration or replacement does not commence within the 1-year period, the use or development will lose its nonconforming status, and any subsequent use or development on the site shall conform to all applicable land use and development regulations.

## 19.806 AMORTIZATION OF NONCONFORMING USES

### 19.806.1 Purpose

The purpose of this section is to provide a process whereby the City could require the discontinuance of nonconforming uses through amortization in a manner that is fair, predictable, and transparent.

### 19.806.2 Applicability

A. All legally established high-impact nonconforming uses, as defined in Section 19.201 and as identified on the City's inventory pursuant to Subsection 19.806.3.B, are subject to amortization and discontinuance. Illegally established uses are subject to enforcement proceedings by the City if not immediately discontinued or converted to a conforming use.

B. The following nonconforming uses are not subject to amortization and discontinuance:

1. Nonconforming uses that can be made conforming within 6 months, where the owner also enters into an agreement with the City to bring the use into conformance within 6 months.
2. Nonconforming uses that are protected under the Religious Land Use and Institutionalized Persons Act.
3. Nonconforming uses that are identified as low-impact nonconforming uses, as defined in Section 19.201.

### 19.806.3 Identification of Nonconforming Uses

A. The City Council may direct the Planning Director to evaluate existing land uses within the city for the purpose of compiling an inventory of uses subject to amortization and discontinuance. Such direction shall be made by resolution at a public meeting.

B. The Planning Director's evaluation shall be undertaken as follows:

1. Create a list of all nonconforming uses pursuant to City Council direction as provided in Subsection 19.806.3.C below.
2. Remove all properties that are exempt under Subsection 19.806.2.B from the list.
3. Determine which nonconforming uses that remain on the list are high-impact nonconforming uses, as defined by Section 19.201.

4. Compile an inventory of all properties containing a high-impact nonconforming use.

C. At the time of a vote directing the Planning Director to perform an evaluation of nonconforming uses, the Council shall specify the following:

1. The amount of time the Planning Director has to perform the evaluation, which shall be no less than 60 days.
2. Whether the Planning Director shall evaluate all uses in the entire City or whether the evaluation should be limited to a specified geographic area, type of use, or zoning district.

D. No less than 60 days after the Planning Director's completion of the inventory, City Council shall review and adopt the inventory by resolution. Upon review of the Planning Director's evaluation and inventory, Council may add or remove properties from the inventory prior to its adoption.

E. No more than 30 days after the adoption of the inventory by City Council, the Planning Director shall provide notice to all property owners listed in the nonconforming use inventory. Such notice shall include the following:

1. A statement that the City has determined that the subject property contains at least one nonconforming use that is subject to discontinuance through amortization.
2. The findings from the Planning Director's evaluation.
3. A copy of this section.
4. The date of the first evidentiary hearing before the Planning Commission to determine the schedule of amortization and discontinuance. Such a hearing shall be scheduled no less than 60 days after the mailing of the notice.

**19.806.4 Review Process**

A. For all properties with identified nonconforming uses that are included in the adopted nonconforming use inventory, the City shall require the discontinuance of such uses under a plan whereby the full value of any use-dependent structures and facilities are amortized within a definite and reasonable period of time. This action is a quasi-judicial action and shall utilize the Type IV review process pursuant to Section 19.1007. A separate hearing shall be conducted for each nonconforming use to determine the appropriate amortization schedule.

1. The approved amortization schedule shall be adopted by ordinance and shall commence upon the effective date of the ordinance.
2. The hearings conducted under this subsection, per Section 19.1007 Type IV Review, shall be limited to the determination of the following:
   a. Whether the use is properly included on the inventory.
   b. Whether the use is exempt from amortization and discontinuance under Subsection 19.806.2.B.
   c. The duration of a reasonable amortization period and all terms associated therewith, based on the evaluation criteria in Subsection 19.806.5.

B. The City Council may, by ordinance, execute a compliance agreement with the owner of any property found to contain a high-impact nonconforming use. Such an agreement shall include a schedule for the property owner to bring the property into conformance through discontinuance of all nonconforming uses in a certain amount of time or by other means

acceptable to the City. Such an agreement shall alleviate the City's obligation to schedule a hearing to determine an amortization period pursuant to Subsection 19.806.4.A or, alternatively, shall supersede the established amortization period for the subject property.

C. The City shall record in the Clackamas County real estate records all ordinances adopted pursuant to this subsection.

**19.806.5 Evaluation Criteria**

The City's review authorities shall consider the following criteria, at a minimum, in determining a reasonable length of time for the amortization period:

A. Nature of the use, its operations, and structures.

B. Character of the land and land uses in the surrounding area.

C. Location of the use in relation to surrounding uses.

D. Value of the land and its improvements.

E. Length of time the use has been in existence and the length of time the use has been nonconforming.

F. Amount of capital investment in the structures or improvements on the property at the time the use became nonconforming.

G. Amount of investment realized to date and the amount remaining, if any, to be recovered during the amortization period.

H. Existence or nonexistence of lease obligations.

I. Removal costs that are directly attributable to the establishment of a discontinuance date.

J Other costs and expenses that are directly attributable to the establishment of a discontinuance date.

K. Burden on the property owner resulting from discontinuance of the use.

L. Benefit to the public resulting from discontinuance of the use.

## CHAPTER 19.900 LAND USE APPLICATIONS

[All current land use applications are identified in Chapter 19.900. The new chapter includes some existing provisions, some new provisions, and references to all other application provisions that are located elsewhere. See Exhibit D for complete chapter.]

### 19.901 INTRODUCTION

[New text. Complete section below—no underlining.]

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval for all required land use applications prior to establishment or construction. Table 19.901 below contains a complete list of the City's land use applications and the location of the provisions that govern their submittal, review, and approval. It also identifies the review type(s) associated with each application type. The review type determines who is given notice about land use and development proposals, when the City has

to make a decision on a land use application, and who makes the final decision. Descriptions of the different review types and the procedures associated with them are located in Chapter 19.1000. Decision makers for each review type are listed in Table 19.1001.5.

**Table 19.901**
**Land Use Applications**

| Application Type | Municipal Code Location | Review Types |
|---|---|---|
| Amendments to Maps and Ordinances: | Section 19.902 | |
| Comprehensive Plan Text Amendment | Subsection 19.902.3 | V |
| Comprehensive Plan Map Amendment | Subsection 19.902.4 | IV, V[1] |
| Zoning Text Amendment | Subsection 19.902.5 | V |
| Zoning Map Amendment | Subsection 19.902.6 | III, V[2] |
| Annexations and Boundary Changes: | Chapter 19.1100 | |
| Boundary Change | Section 19.1103 | NA |
| Expedited Annexation | Section 19.1104 | NA |
| Nonexpedited Annexation | Section 19.1102 | IV |
| Appeal | Section 19.1010 | Varies |
| Code Interpretation | Section 19.903 | I |
| Community Service Use | Section 19.904 | I, III |
| Compensation for Reduction in Property Value (Measure 37) | Chapter 1.20 | NA |
| Conditional Use | Section 19.905 | I, III |
| Development Review | Section 19.906 | I, II |
| Director Determination | Section 19.903 | I |
| Downtown Design Review | Section 19.907 | I, II, III |
| Extension to Expiring Approval | Section 19.908 | I, II |
| Historic Resource: | Section 19.403 | |
| Alteration | Subsection 19.403.5 | I, III |
| Demolition | Subsection 19.403.7 | III |
| Status Designation | Subsection 19.403.4 | IV |
| Status Deletion | Subsection 19.403.4 | IV |
| Land Divisions: | Title 17 | |
| Final Plat | Title 17 | I |
| Lot Consolidation | Title 17 | I |
| Partition | Title 17 | II |
| Property Line Adjustment | Title 17 | I, II |
| Replat | Title 17 | I, II, III |
| Subdivision | Title 17 | III |
| Miscellaneous: | Chapters 19.500 | |
| Barbed Wire Fencing | Subsection 19.502.2.B.1.b-c | II |
| Bee Colony | Subsection 19.503.1.D | III |
| Multifamily Recycling Area | Subsection 19.504.8 | I |

[1] Level of review determined by City Attorney per Section 19.902.4.A.
[2] Level of review determined by City Attorney per Section 19.902.6.A.1.

| Table 19.901 CONTINUED<br>Land Use Applications | | |
|---|---|---|
| **Application Type** | **Municipal Code Location** | **Review Types** |
| Mixed Use Overlay Review | Section 19.404 | III |
| Modification to Existing Approval | Section 19.909 | I, II, III |
| Nonconforming Use Alteration | Chapter 19.804 | III |
| Parking: | Chapter 19.600 | |
| Quantity Determination | Subsection 19.605.2 | II |
| Quantity Modification | Subsection 19.605.2 | II |
| Shared Parking | Subsection 19.605.4 | I |
| Structured Parking | Section 19.611 | II, III |
| Planned Development | Section 19.317 | IV |
| Residential Dwellings: | Section 19.910 | |
| Accessory Dwelling Unit (Type 1) | Subsection 19.910.1 | II |
| Accessory Dwelling Unit (Type 2) | Subsection 19.910.2 | III |
| Manufactured Dwelling Park | Subsection 19.910.3 | III |
| Temporary Dwelling Unit | Subsection 19.910.4 | I, III |
| Sign Review | Title 14 | Varies |
| Transportation Facilities Review | Chapter 19.700 | II |
| Variances: | Section 19.911 | |
| Use Exception | Subsection 19.911.5 | III |
| Variance | Subsection 19.911.1-4 | II, III |
| Water Quality Resource Review | Section 19.402 | I, II, III, IV |
| Willamette Greenway Review | Section 19.401 | III |

## 19.902 ~~MAP AND TEXT~~ AMENDMENTS TO MAPS AND ORDINANCES

[Current Chapter 19.900 repealed and replaced as Section 19.902. Complete section below—no underlining.]

### 19.902.1 Purpose

This section establishes the process for amending the City's Comprehensive Plan and land use regulations within the Milwaukie Municipal Code. The approval process related to Comprehensive Plan amendments is intended to ensure compliance with State laws and administrative rules, including the 19 Statewide Planning Goals and the Metro Urban Growth Management Functional Plan, Chapter 3.07, Title III of the Metro Code. The approval process related to land use amendments is intended to ensure compliance with the Comprehensive Plan.

The goals and policies of the Comprehensive Plan are implemented, in part, through the land use regulations of the Milwaukie Municipal Code. The sections of the Municipal Code that most directly relate to implementation of the Comprehensive Plan are Title 14 Signs, Title 17 Land Division, and Title 19 Zoning.

### 19.902.2 Applicability

The requirements of Section 19.902 apply to the amendments described below.

A. Amendments to add, modify, or delete the text of the Milwaukie Comprehensive Plan or its ancillary documents.

B. Amendments to add, modify, or delete the text of Titles 14, 17, and 19 of the Milwaukie Municipal Code, or any other portion of the Milwaukie Municipal Code that constitutes a land use regulation per ORS 197.015.

C. Amendments to change the maps of the Milwaukie Comprehensive Plan, including maps within ancillary documents. Changes to these maps resulting from actions taken by Section 19.1104 Expedited Process are exempt from the requirements of Section 19.902

D. Amendments to change the "Zoning Map of Milwaukie, Oregon," which is the map established by Subsection 19.107.2. Changes to this map resulting from actions taken by Section 19.1104 Expedited Process are exempt from the requirements of Section 19.902

**19.902.3 Comprehensive Plan Text Amendments**

Changes to the text of the Milwaukie Comprehensive Plan shall be called Comprehensive Plan text amendments.

A. Review Process

Changes to the text of the Milwaukie Comprehensive Plan described by Subsection 19.902.2.A shall be evaluated through a Type V review per Section 19.1008.

B. Approval Criteria

Changes to the Milwaukie Comprehensive Plan may be approved if the following criteria are met:

1. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, as proposed to be amended.
2. The proposed amendment is in the public interest with regard to neighborhood or community conditions.
3. The public need is best satisfied by this particular proposed amendment.
4. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
5. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

**19.902.4 Comprehensive Plan Map Amendments**

Changes to the maps of the Milwaukie Comprehensive Plan shall be called Comprehensive Plan map amendments.

A. Review Process

Changes to the maps of the Milwaukie Comprehensive Plan described in Subsection 19.902.2.C shall be evaluated through either a Type IV review, per Section 19.1007, or Type V review, per Section 19.1008. The City Attorney shall have the authority to determine the appropriate review process for each Comprehensive Plan map amendment. The City Attorney's review process determination is not a land use decision per ORS 197.015 and is not subject to appeal.

Generally, Comprehensive Plan map amendments that involve 5 or more properties or encompass more than 2 acres of land are legislative in nature and subject to Type V review. Comprehensive Plan map amendments that involve fewer properties and

encompass a smaller area of land are quasi-judicial in nature and subject to Type IV review.

B. Approval Criteria

Changes to the maps of the Milwaukie Comprehensive Plan shall be evaluated against the approval criteria in Subsection 19.902.3.B. A quasi-judicial map amendment shall be approved if these criteria are met. A legislative map amendment may be approved if these criteria are met.

### 19.902.5 Zoning Text Amendments

Changes to the text of land use regulations within the Milwaukie Municipal Code shall be called zoning text amendments, regardless of the individual titles involved.

A. Review Process

Changes to Titles 14, 17, or 19 of the Milwaukie Municipal Code, or any land use regulation as defined by ORS 197.015, that are described by Subsection 19.902.2.B shall be evaluated through a Type V review per Section 19.1008.

B. Approval Criteria

Changes to the Milwaukie Municipal Code described by Subsection 19.902.2.B may be approved if the following criteria are met:

1. The proposed amendment is consistent with other provisions of the Milwaukie Municipal Code.
2. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.
3. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
4. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.
5. The proposed amendment is consistent with relevant federal regulations.

### 19.902.6 Zoning Map Amendments

Changes to the Zoning Map of Milwaukie, Oregon, shall be called Zoning Map amendments.

A. Review Process

1. Changes to the Zoning Map described in Subsection 19.902.2.D shall be evaluated through either a Type III review, per Section 19.1006, or Type V review, per Section 19.1008. The City Attorney shall have the authority to determine the appropriate review process for each Zoning Map amendment. The City Attorney's review process determination is not a land use decision per ORS 197.015 and is not subject to appeal.

   Generally, Zoning Map amendments that involve 5 or more properties or encompass more than 2 acres of land are legislative in nature and subject to Type V review. Zoning Map amendments that involve fewer properties and encompass a smaller area of land are quasi-judicial in nature and subject to Type III review.

2. Changes that affect both the Zoning Map and text of Titles 14, 17, or 19, or other land use regulations within the Milwaukie Municipal Code shall be evaluated through a Type V review per Section 19.1008. These changes are subject to the approval criteria of Subsections 19.902.5.B and 19.902.6.B.

B. Approval Criteria

Changes to the Zoning Map shall be evaluated against the following approval criteria. A quasi-judicial map amendment shall be approved if the following criteria are met. A legislative map amendment may be approved if the following criteria are met:

1. The proposed amendment is compatible with the surrounding area based on the following factors:
   a. Site location and character of the area.
   b. Predominant land use pattern and density of the area.
   c. Expected changes in the development pattern for the area.
2. The need is demonstrated for uses allowed by the proposed amendment.
3. The availability is shown of suitable alternative areas with the same or similar zoning designation.
4. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.
5. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.
6. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.
7. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
8. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

C. Conditions of Approval

Conditions of approval may be applied to Zoning Map amendments for purposes of fulfilling identified need for public facilities and/or meeting applicable regional, State, or federal regulations. Conditions of approval may include actual construction of facilities or a performance contract, bond, or escrow account to assure installation of public facilities to specified standards.

D. Modification of Official Zoning Map

For Zoning Map amendments not involving conditions of approval, the Zoning Map shall be modified when the adopting ordinance goes into effect. For Zoning Map amendments involving conditions of approval, the Zoning Map shall not be modified until all conditions of approval are satisfied.

E. Revocation

If conditions of approval are not met within 2 years of ordinance adoption, the Planning Commission shall hold a public hearing to consider the revocation of the approved zoning through a Type III review per Section 19.1006. The Planning Commission may also, upon determination that the applicant is making satisfactory progress towards completing conditions of approval, grant a one-time extension not to exceed a maximum of 2 years.

## 19.903 CODE INTERPRETATIONS AND DIRECTOR DETERMINATIONS

[Current Subsection 19.1001.4 and Section 19.809 repealed and replaced as Section 19.903. Complete section below—no underlining.]

### 19.903.1 Purpose

The purpose for both code interpretations and Director determinations is to allow for discretionary rulings on the interpretation and application of the provisions of land use regulations. The most common instances for which such rulings are required are where the text of the land use regulation is unclear, where a determination is needed about the similarity of a proposed use and uses that are allowed outright, and where a determination is requested regarding the legal status of a use or property. The initial decisions on these matters are to be made by the Planning Director at an administrative level with the option for appeal.

Code interpretations are not intended to substitute for legislative amendments to land use regulations. Code interpretations may, however, be used as an interim measure to allow the City's land use regulations to be applied consistently with regional, State, or federal requirements until legislative amendments can be made.

### 19.903.2 Applicability

The provisions of Section 19.903 apply to the situations described below.

A. A code interpretation may be made where the language of Titles 14, 17, or 19 is unclear in its terms, meaning, or intent. An interpretation is not necessary where the meaning of the code is unambiguous and no discretion is required in its interpretation. An interpretation is prohibited in either of the following situations:

   1. The code interpretation may affect the evaluation of approval standards or criteria for any quasi-judicial land use application that is currently under review by the City.

   2. The code interpretation is being sought as a remedy to a violation of the Milwaukie Municipal Code for which the City has issued a citation and the citation is pending judgment or sentencing.

B. A Director determination may be requested for the following situations.

   1. Determination of whether a use is similar in nature to other uses allowed outright within a zone. A formal determination is not necessary where the comparison is obvious and the decision is nondiscretionary.

   2. Determination of the legal status of a nonconforming use or development.

   3. Determination of the legal status of a unit of land.

   4. Determination for any other situation where a discretionary decision is needed to review the facts of a situation and make determination as to the status, category, allowance, etc. per Titles 14, 17, or 19. This process is not available for provisions that specifically state that a decision under that provision cannot be appealed.

### 19.903.3 Review Process

A. General Provisions

   1. Code interpretations are initiated by application to the City. The applicant may be any member of the public, the Planning Director, Planning Commission, or City Council. The Planning Director will decide within 14 days of receipt of an application whether to refuse or accept the request and issue an interpretation. Any application fees will be refunded if a request is refused.

2. Director determinations are initiated by application to the City.

B. Review Procedures

1. Code interpretations are evaluated through a Type I review per Section 19.1004. In addition to other notice provisions, a copy of the notice of decision shall be sent to the Planning Commission and City Council.

2. Director determinations are evaluated through a Type I review per Section 19.1004.

**19.903.4 Approval Criteria**

A. Code Interpretations

Code interpretations are different from other land use applications in that they are an interpretation of language, policy, and legal matters, as opposed to an evaluation of a use or development. A code interpretation shall be as consistent as possible with the criteria listed below. Not all of the criteria need to be met for a code interpretation to be issued.

1. The proposed interpretation is consistent with the common meaning of the words or phrases at issue.

2. The proposed interpretation is consistent with relevant policy direction from official City documents such as the Comprehensive Plan and its ancillary documents.

3. The proposed interpretation is consistent with the legislative intent for the words or phrases at issue. The intent is based on the legislative record for the ordinance that adopted or amended the regulations at issue.

4. The proposed interpretation is consistent with the interpretation of other portions of the Milwaukie Municipal Code.

5. The proposed interpretation is consistent with regional, State, and federal laws and court rulings that affect the words or phrases at issue.

B. Director Determinations

1. Similar Use

Director determinations of similar use shall be based on the following criteria:

a. The proposed use and uses that are allowed outright are comparable with respect to the characteristics described below.

(1) Hours of operation.

(2) Generation of off-site impacts such as noise, lighting glare, dust, and odors.

(3) Employment and customer characteristics.

b. The proposed use is consistent with the stated purpose, if available, of the zone under consideration.

c. The base zone of the property where the use is proposed is reasonably similar to other zones where the proposed use is allowed outright.

d. The proposed use is consistent with the goals and policies of the Comprehensive Plan regarding the appropriate locations within the city for the proposed use.

2. Legal Status of a Nonconforming Use or Development

Director determinations of legal status of a nonconforming use or development shall be based on the following criteria:

a. The nonconforming use or development was permitted under applicable regulations at the time it was established. Evidence to address this criterion may include the following items:

(1) Copies of building and/or land use permits issued at the time the use, structure, or site improvement was established.

(2) Copies of zoning code provisions and/or maps in place at the time use, structure, or site improvement was established.

(3) Demonstration that the use, structure, or site improvement was established before the applicable development code for the community was adopted.

b. The nonconforming use has been legally maintained over time and has not been discontinued or abandoned, as described by Subsection 19.803.2. Evidence to address this criterion may include the following items:

(1) Utility bills.

(2) Income tax records.

(3) Business licenses.

(4) Listings in telephone, business, and Polk directories.

(5) Advertisements in dated publications; e.g., trade magazines.

(6) Building, land use, or development permits.

3. Legal Status of a Unit of Land

Director determinations of the legal status of a unit of land shall evaluate the date of creation or boundary change for the units of land in question and determine whether the required City, County, and State approvals were granted at that time to approve the land division or boundary change.

Evidence that required approvals were granted may include the following items:

a. Title report, including related instruments of conveyance.

b. Plats on file with the Clackamas County Surveyor.

c. Deeds recorded with the Clackamas County Recorder.

d. Land use applications and decisions from the City of Milwaukie or Clackamas County.

4. Other

The Planning Director may make other determinations, aside from similar use, legal status of a nonconforming use or development, or legal status of a unit of land. Such a determination shall evaluate the specific facts concerning the determination request and make a ruling of how to apply the provisions of Title 14, 17 or 19, or other land use regulations within the Milwaukie Municipal Code. The approval criteria for this determination are as follows:

a. The determination is consistent with relevant policy direction from official City documents such as the Comprehensive Plan and its ancillary documents.

b. The determination is consistent with the purpose or intent statements, if available, in the applicable sections of code.

c. The determination is consistent with the legislative intent for the words or phrases at issue. The intent is based on the legislative record for the ordinance that adopted or amended the regulations at issue.

d. The determination is consistent with any legal opinions from the City Attorney.

**19.903.5 Other Provisions for Code Interpretations and Director Determinations**

A. Code Interpretations

1. Code interpretations shall control the future application of the sections of the Milwaukie Municipal Code to which they pertain unless superseded by a subsequent code interpretation or legislative change to the Milwaukie Municipal Code.

2. The Planning Director shall maintain current code interpretations on file at the Planning Department's offices for public review.

B. Director Determinations: Similar Use and Other

1. Director determinations issued under Subsections 19.903.4.B.1 and 4 are based on the specific facts presented for each determination. Director determinations issued by the City may be relied upon for future determinations where circumstances are similar, but do not necessarily set precedent for subsequent code determinations.

2. Issuance of a Director determination does not obligate the City to issue any permit or preclude code enforcement action if the situation evaluated by the City differs from what was presented in the determination request.

3. A Director determination issued under Subsection 19.903.4.B.1 or 4 does not expire unless the code used for the determination is amended.

C. Director Determinations: Legal Status of a Nonconforming Use or Development or Unit of Land

1. An applicant for a Director determination issued under Subsection 19.903.4.B.2 or 3 may request a subsequent determination if new evidence or materials become available.

2. The City may pursue code enforcement to correct a violation of the Milwaukie Municipal Code following a Director determination where evidence is clear that a use, land division, or boundary change was illegally established.

**19.904 COMMUNITY SERVICE USES ~~CSU~~**

[Current Section 19.321 renumbered as Section 19.904. Only amended text is shown below. See Exhibit D for complete chapter.]

**19.904.3 Review Process ~~Notice Requirements~~**

Except as provided in Subsections 19.904.5.C for minor modifications and 19.904.11 for ~~W~~wireless ~~C~~communication ~~F~~facilities, community service uses shall be evaluated through a Type III review per ~~the Planning Commission shall hold a public hearing for a community service use request per the procedures outlined in~~ Section 19.1006.

**19.904.4 Approval Criteria ~~Standards for Community Service Uses~~**

**19.904.5 Procedures for Reviewing a Community Service Use**

A. The Planning Commission will hold a public hearing on the establishment of, or major modification of, the proposed community service use. If the Commission finds that the approval criteria ~~standards~~ in Subsection 19.904.4 are met, the Commission shall approve the designation of the site for community service use. If the Commission finds otherwise, the application shall be denied. An approval allows the use on the specific property for which the application was submitted, subject to any conditions the Planning Commission may attach.

C. The Planning Director may approve minor modifications to an approved community service per Section 19.1004 Type I Review ~~use pursuant to a Type I procedure~~, provided that such modification:

**19.904.11 Standards for Wireless Communication Facilities**

**C. Application Process:**

1. Placement, construction, or modification of WCFs not involving the construction of a new monopole ~~shall be~~ are subject to ~~the provisions of~~ Section 19.1005 Type II Review, provided that the antennas and base equipment comply with the standards contained in this subsection. Also see Table 19.904.11.C.
2. All proposed new monopole towers are subject to Section 19.1006 Type III~~Minor Quasi-judicial r~~ Review. Also see Table 19.904.11.C.

**Table 19.904.11.C** (footnotes)**:**

**1** = Type III ~~Minor Quasi-judicial~~ review—requires a public hearing in front of the Planning Commission

**2** = Type II ~~Administrative~~ review—provides for an administrative decision ~~with the option of a public hearing~~

**Subsection G.6:**

d. In some cases equipment cabinets may be placed in areas where landscaping may not be practical. For ~~these circumstances for~~ Type II land use ~~reviews~~ applications, the applicant may request that the Planning Director waive landscaping requirements. For Type III ~~Minor Quasi-judicial~~ land use applications, the applicant may request that the Planning Commission waive landscaping requirements.

**19.905 CONDITIONAL USES**

[Current Chapter 19.600 repealed and replaced as Section 19.905 (except Subsection 19.602.10 moved to Subsection 19.910.2—see below). Complete section below—no underlining.]

**19.905.1 Purpose**

The purpose of the conditional use regulations is to evaluate the establishment of certain uses that may be appropriately located in some zoning districts, but only if appropriate for the specific site on which they are proposed.

Conditional uses are not allowed outright. Although they may provide needed services or functions in the community, they are subject to conditional use review because they may

adversely change the character of an area or adversely impact the environment, public facilities, or adjacent properties. The conditional use review process allows for the establishment of conditional uses when they have minimal impacts or when identified impacts can be mitigated through conditions of approval. The review process also allows for denial when concerns cannot be resolved or impacts cannot be mitigated.

Approval of a conditional use shall not constitute a zone change and shall be granted only for the specific use requested. Approval is subject to such modifications, conditions, and restrictions as may be deemed appropriate by the review authority.

### 19.905.2 Applicability

A. This section applies to the establishment of a use identified as a conditional use in the base zone in Chapter 19.300 and any overlay zones in Chapter 19.400 that are applicable to the property on which the use is proposed.

B. This section applies to the major or minor modification of existing conditional uses.

C. This section does not apply to modification of uses that received conditional use approval at one time but are currently allowed outright by the property's base zone and any overlay zones.

### 19.905.3 Review Process

A. Establishment of a new conditional use, or major modification of an existing conditional use, shall be evaluated through a Type III review per Section 19.1006.

B. Minor modification of an existing conditional use shall be evaluated through a Type I review per Section 19.1004.

### 19.905.4 Approval Criteria

A. Establishment of a new conditional use, or major modification of an existing conditional use, shall be approved if the following criteria are met:

1. The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.
2. The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.
3. All identified impacts will be mitigated to the extent practicable.
4. The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by uses allowed outright at the proposed location.
5. The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones, and the standards in Section 19.905.
6. The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.
7. Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.

B. Minor modification of an existing conditional use shall be approved if the following criteria are met:

1. The proposed modification will not significantly increase the intensity of the use at this location.
2. The proposed modification will comply with all applicable development standards and requirements of the base zone, any overlay zones, and the standards in Section 19.905.
3. The proposed modification will not negatively impact nearby uses, protected natural features, or public facilities more than the original conditional use.
4. The proposed modification will comply with any conditions of approval from the original conditional use approval.

**19.905.5 Conditions of Approval**

The Planning Commission, or Planning Director in the case of minor modifications, may impose conditions of approval that are suitable and necessary to assure compatibility of the proposed use with other uses in the area and minimize and mitigate potential adverse impacts caused by the proposed use.

Conditions of approval may include, but are not limited to, the following aspects of the proposed use:

A. Limiting the hours, days, place, and manner of operation.

B. Requiring structure and site design features that minimize environmental impacts such as those caused by noise, vibration, air pollution, glare, odor, carbon emissions, and dust.

C. Requiring additional front, rear, or side yard width.

D. Limiting building height, size, or location or limiting lot coverage.

E. Limiting or otherwise designating the size, number, or location of vehicle access points from the street.

F. Requiring additional landscaping or screening of off-street parking and loading areas.

G. Limiting or otherwise designating the location, intensity, and shielding of outdoor lighting.

H. Requiring screening or landscaping for the protection of surrounding properties.

I. Requiring and designating the size, height, location, and materials for fences.

J. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, and drainage areas.

K. Requiring adequate public transportation facilities and public utilities prior to occupancy.

**19.905.6 Conditional Use Permit**

A. The City will issue a conditional use permit upon the approval of an application to establish a conditional use or allow major modification of an existing conditional use. The Planning Director may decide if it is necessary to revise an existing conditional use permit after approval of a minor modification.

B. The conditional use permit shall include the following information:

1. A description of the use that has been approved by the City.
2. Restrictions and/or conditions of approval placed upon the use.
3. Ongoing responsibilities required for the operation of the conditional use.

4. Allowance for the transfer of rights and responsibilities upon change in ownership of either the use or the property containing the use.
5. Procedures for review, revisions, and suspension of the conditional use permit.

C. The applicant must record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit.

D. A conditional use permit is not affected by a change in ownership of the use or the property containing the use. A conditional use permit is valid unless one of the following occurs:

1. There is a change in use.
2. The permit is suspended per the procedures in Subsection 19.905.6.
3. The use is discontinued as described in Subsection 19.905.8.

E. Compliance with the terms and conditions of the conditional use permit is required on an ongoing basis.

F. The notice of decision, Planning Commission minutes, and other city records shall constitute the conditional use permit for conditional uses that were approved prior to the effective date of this ordinance.

**19.905.7 Review of Existing Conditional Use Permits**

A. The Planning Director may evaluate the operation of a conditional use for compliance with the conditional use permit if it appears the terms and conditions of the permit are being violated or complaints are received regarding the use. An observation or complaint must be based on one of the following occurrences:

1. Violation of any applicable development standard or requirement that pertains to the conditional use.
2. Failure to operate as approved or failure to satisfy a condition of approval from the original conditional use approval.
3. Incidents that are perceived to be a direct result of the conditional use and that may be detrimental to the health, safety, property, or general welfare of the public.

B. If the Planning Director finds that the conditional use is noncompliant or is having unanticipated impacts that are detrimental to the health, safety, property, or general welfare of the public, the Planning Director shall require the owner and/or operator to resolve the issue within a specified period of time.

C. If the owner and/or operator of the conditional use cannot or does not resolve the issue in Subsection 19.905.7.B, the matter shall be heard by the Planning Commission to review the conditional use permit and to consider modification, suspension, or revocation of the conditional use permit. The review shall follow the procedures of Section 19.1006 Type III Review. The owner and/or operator shall not be charged a fee for this review.

The Planning Commission may take the following actions in consideration of the conditional use permit:

1. Allow the continued operation of the conditional use without modifications to the conditional use permit. This option should be utilized when the Planning Commission finds that the use is not out of conformance with the conditional use permit or that complaints raised under Subsection 19.905.7.A.3 are not detrimental to the health, safety, property, or general welfare of the public.

2. Suspend the permit and require the cessation of the conditional use until the issue is resolved. Upon suspension of the conditional use permit, the Planning Commission shall set a future meeting date to consider reinstating the permit. A suspended permit may be reinstated when, in the judgment of the Planning Commission, the issue has been resolved.
3. Modify the conditional use permit to address the circumstance(s) that gave rise to the issue. Modifications to the conditional use permit shall be based on factors relevant to the approval criteria for conditional uses in Subsection 19.905.4. The Planning Commission may opt to suspend the permit per Subsection 19.905.7.C.1 until compliance with the modified conditional use permit is achieved.
4. Revoke the conditional use permit. Revocation of a conditional use permit shall only occur in either of the following circumstances:
   a. The nature of the conditional use is such that its impacts cannot be minimized or mitigated to be consistent with the conditional use approval criteria.
   b. The property owner and/or operator of the conditional use failed to comply with the terms and/or conditions of the original or modified conditional use permit.

**19.905.8 De Facto Conditional Use Status and Loss of Conditional Use Status**

A. A legally established use currently identified in the code as a conditional use is a de facto conditional use, rather than a nonconforming use, even if:
   1. It had previously been identified as a use that was allowed outright or a nonconforming use.
   2. It had not previously undergone conditional use review.

   A de facto conditional use does not require a conditional use permit. Modifications to a de facto conditional use shall be evaluated per Subsections 19.905.3 and 4.

B. A conditional use or de facto conditional use shall automatically lose its conditional use status if either of the following occurs. A dispute about whether either of these situations has occurred shall be resolved by the Planning Director through the Director determination process pursuant to Section 19.903.
   1. The conditional use or de facto conditional use undergoes a change in use. A change in use to a use that is allowed outright, or a use approved through another discretionary review process, results in the loss of any conditional use status. A change in use to another approved conditional use results in the loss of the conditional use status only for the prior use.
   2. The conditional use or de facto conditional use has been discontinued or abandoned as defined in Section 19.201 for more than 2 years. This discontinuation applies only to properties that both:
      a. Received conditional use approval or became de facto conditional uses on or after DATE, the effective date of Ordinance #_____.
      b. Are not residential conditional uses or residential de facto conditional uses.

**19.905.9 Standards Governing Conditional Uses**

A conditional use shall comply with the standards of the base zone, and any overlay zones, in which it is located, except as these standards have been modified by the Planning Commission

when authorizing the conditional use and as otherwise modified by the standards in this subsection.

A. Yards

Additional yard width requirements may be imposed as a condition of approval to address impacts related to building height, mass, and proximity to residential land uses.

B. Access to Property and Building Openings

The City may limit or prohibit vehicle access from a conditional use to a residential street, and it may limit or prohibit building openings within 50 ft of residential property in a residential zone if the openings will cause glare or excessive noise or will otherwise adversely affect adjacent residential property.

C. Surface Mining

In considering a conditional use application for surface mining, the following minimum requirements shall apply:

1. Open pit and gravel excavating or processing shall not be permitted nearer than 50 ft to the boundary of an adjoining property line, unless written consent of the owner of such property is first obtained. Excavating or processing shall not be permitted closer than 30 ft to the right-of-way line of an existing or platted street or an existing public utility right-of-way.
2. Production from an open pit or the removal of sand and gravel shall not leave a slope exceeding 1 ft horizontal for 1 ft vertical.
3. An open pit or sand and gravel operation shall be enclosed by a fence suitable to prevent unauthorized access.
4. A rock crusher, washer, or sorter shall not be located nearer than 500 ft to a residential or commercial zone. Surface mining equipment and necessary access roads shall be constructed, maintained, and operated in such a manner as to eliminate, as far as is practicable, noise, vibration, or dust which is injurious or substantially annoying to persons living in the vicinity.

D. Junk or Wrecking Yard

In considering a conditional use application for a junk or wrecking yard, the Planning Commission shall require that it be enclosed by a sight-obscuring fence not less than 6 ft high.

E. High-Impact Commercial Use

1. In considering a conditional use application for a high-impact commercial use, the Planning Commission shall consider the following:
    a. Nearness to dwellings, churches, hospitals, parks, or other uses that require a quiet environment.
    b. Building entrances, lighting, exterior signs, and other features that could generate or be conducive to noise or other disturbance for adjoining uses.
    c. Parking vehicles and pedestrian access and circulation that could contribute to noise or attract habitual assembly of unruly persons.
    d. Hours of operation.

2. In addition to consideration of the above with respect to building and site design, the Planning Commission may attach conditions or standards of performance and impact, and methods for monitoring and evaluating these, to ensure that such establishments do not become unduly or unnecessarily disruptive.

F. Single-Family Attached Dwellings

In considering a conditional use application for single-family attached dwellings, the Planning Commission shall consider the following:

1. Whether a structure of a similar type is within 200 ft.
2. Relationship to neighboring uses.
3. Street access.
4. Terrain of the site.

G. Multifamily Condominium and Apartment Dwellings

In considering a conditional use application for multifamily condominium and apartment dwellings, the Planning Commission shall consider the following:

1. Relationship to neighboring uses.
2. Street access.
3. Terrain of the site.

H. Senior and Retirement Housing

In considering a conditional use application for senior and retirement housing, the Planning Commission shall consider the following:

1. Pedestrian access to transit.
2. Pedestrian access to convenience facilities such as grocery store, pharmacy, laundromat, park and open space, and senior activity center.
3. Pedestrian access to banking, churches, hospitals, and restaurants.
4. Quality of project as a living environment for residents.
5. Minimizing impact on the surrounding area.

The Planning Commission may recommend to the City Council an increase in density to as much as that permitted by the next higher zone. The City Council shall make the final decision on density increase.

An applicant shall submit materials and the Planning Commission shall attach conditions that will ensure that the special nature of the housing, and the groups to be served, are clearly defined and maintained in perpetuity. A project is required to meet the definition for this type of housing in Section 19.201.

## 19.906 DEVELOPMENT REVIEW

[New text. Complete section below—no underlining.]

### 19.906.1 Purpose

The purpose of this section is to ensure compliance with the standards and provisions of the City's land use regulations through an efficient review process that effectively coordinates the

City's land use and development permit review functions. Development review is intended to encourage quality development that is compatible with its surroundings and reflects the goals and policies of the Milwaukie Comprehensive Plan.

### 19.906.2 Applicability

A. Type I Review

The following development proposals must submit a development review application and are subject to the requirements of this section, unless explicitly stated otherwise in an applicable land use approval, waived by the Planning Director at the time of development permit submittal, or exempted per Subsection 19.906.2.C.

1. New development and expansions or modifications of existing development that require review against standards and criteria that are either clear and objective, or that require the application of limited professional judgment.
2. A change in primary use.
3. Parking lot expansions or modifications that change the number of parking spaces by 5 spaces or more.

B. Type II Review

The following development proposals must submit a development review application and are subject to the requirements of this section. Type II development review does not apply to development proposals in the downtown zones as these zones have a separate design review process.

1. New development, or expansions or modifications to existing development, for which the applicant elects, where a choice is available, to have the proposal reviewed against discretionary criteria or standards.
2. New construction of over 1,000 sq ft in the Manufacturing Zone within 120 ft of areas zoned for residential uses or within any part Business Industrial Zone.
3. New development or expansions, or modifications to existing development, where the scale of development and/or the level of discretion required to evaluate applicable standards and criteria is not appropriate for a Type I development review.

C. Exemptions

The following development proposals are not required to submit a development review application and are exempt from the requirements of this section. Proposals that are exempt from this section must still comply with all applicable development and design standards. For proposals that require a development permit, compliance with standards will be reviewed during the permit review process.

1. New or expanded single-family detached or attached residential dwellings.
2. Single-family residential accessory uses and structures.
3. Interior modifications to existing buildings that do not involve a change of use.
4. Construction of public facilities in the public right-of-way.
5. Temporary events as allowed in Chapter 11.04.

### 19.906.3 Review Process

A. General Provisions

1. Development review generally includes review of the proposed use(s), structure(s), and site improvements for compliance with applicable standards. For expansions or modifications of existing development, the review is limited to the modified portions of the site or structure and any other site improvements that may be affected by the proposed modifications.
2. Development proposals that are subject to Type II development review and require other land use approvals may submit a Type II development review application with the other required land use application(s) for concurrent review per Subsection 19.1001.6.B.
3. Development proposals that are subject to Type II development review and require development permits may submit a development permit application at any time; however, the City will not issue development permits until the Type II development review application has been approved.
4. Development proposals that are subject to Type I development review and require development permits may submit a Type I development review application with the required development permits for concurrent review. The City will not issue development permits until the Type I development review application has been approved.
5. Submittal of a Type II development review application may not preclude the need for submittal of a Type I development review application. Depending on the nature of the development proposal, Type II development review may be required during the land use review phase of the proposal, and Type I development review may be required during the development permit review phase of the proposal.

B. Review Types

1. Type I development review applications are evaluated through a Type I review per Section 19.1004. Type I development review ensures compliance with applicable land use and site development standards, and nondiscretionary design standards.
2. Type II development review applications are evaluated through a Type II review per Section 19.1005. Type II development review is for proposals that opt for or require discretionary review because they either do not meet clear and objective design standards or not all applicable design standards are clear and objective. The Planning Director will determine whether existing standards are clear and objective where they are not clearly identified as such.

### 19.906.4 Approval Criteria

The criteria in this subsection are the approval criteria for Type I and Type II development review applications. The criteria are based on a review of development standards throughout Title 19 Zoning. Not all of the standards within the chapters listed below are applicable to a proposal, and the City will identify the applicable standards through the development review process. Though the criteria are the same for Type I and Type II development review, the standards evaluated in a Type I review will be clear and objective or require limited professional judgment, while the Type II review will involve discretionary standards and/or criteria.

An application for Type I or Type II development review shall be approved when all of the following criteria have been met:

A. The proposal complies with all applicable base zone standards in Chapter 19.300.

B. The proposal complies with all applicable overlay zone standards in Chapter 19.400.

C. The proposal complies with all applicable supplementary development regulations in Chapter 19.500.

D. The proposal complies with all applicable off-street parking and loading standards and requirements in Chapter 19.600.

E. The proposal complies with all applicable public facility standards and requirements, including any required street improvements, in Chapter 19.700.

F. The proposal complies with all applicable conditions of any land use approvals for the proposal issued prior to or concurrent with the development review application.

## 19.907 DOWNTOWN DESIGN REVIEW

[Current Subsection 19.312.7 renumbered as Section 19.907. Only amended text is shown below.]

### 19.907.3 Design Guidelines

Design guidelines shall be established for the downtown zones and shall be considered as part of design review applications in accordance with the provisions of Section 19.310. ~~The design guidelines shall be adopted by resolution of the City Council, in accordance with the procedures of Subsection 19.1011.5.~~

### 19.907.5 Application Procedure

C. ~~M~~A major exterior alteration~~s~~, as defined in Subsection 19.310.6.B.3, shall be ~~processed as Minor Quasi-judicial~~ evaluated through a Type III review in accordance with the procedures in Section 19.1006. Applications for major exterior alterations shall be ~~heard in~~ reviewed at a public hearing ~~by~~ and decided by the Planning Commission, except as follows:

### 19.907.8 Report and Recommendation by Design and Landmarks Committee

~~When an application also requires Planning Commission approval, the Planning Director for Type II reviews, or Design and Landmarks Committee for Minor Quasi-judicial Reviews, shall make a written report of its recommendation concerning the design to the Planning Commission. After receiving the Planning Director's or Design and Landmarks Committee's recommendation, the Planning Commission shall consider the design review recommendation and integrate it with the land use application process applicable to the project.~~

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

## 19.908 EXTENSIONS TO EXPIRING APPROVALS

[New text. Complete section below—no underlining.]

### 19.908.1 Purpose

The purpose of this section is to provide for an appropriate and efficient review process for extending the time period during which land use approvals are valid and may be utilized.

### 19.908.2 Applicability

A. Approvals Eligible for Extensions

An extension may be requested for any unexpired land use application that was required by Titles 14, 17, or 19 of the Milwaukie Municipal Code and that was approved through a Type I, II, or III review.

B. Approvals Not Eligible for Extensions

An extension pursuant to this section may not be requested for an approved land use application that has expired or where other sections of the municipal code specifically prohibit or limit the length or number of extensions allowed.

### 19.908.3 Review Process

A. General Provisions

1. An extension application must be submitted and approved prior to the expiration date of the approval. An extension application may not be submitted more than 6 months in advance of an expiration date.
2. An extension may be approved up to a maximum of 2 years from the effective date of the extension approval. Additional extensions may be requested. There is no limit to the number of extensions that may be requested or approved.
3. If the original application was approved through a Type III review, the Planning Director shall notify the Planning Commission of receipt of an extension application at the same time that public notice is mailed for the application.
4. If an extension application is denied, the applicant may seek approval for the proposed development by resubmitting all applicable land use applications. Such applications are subject to all procedures, approval criteria, and development standards in effect at the time of submission.

B. Review Types

1. If the original application was approved through a Type I review, the extension application shall be evaluated through a Type I review per Section 19.1004.
2. If the original application was approved through a Type II or Type III review, the extension application shall be evaluated through a Type II review per Section 19.1005 in order to provide public notice and opportunity for public comment.

### 19.908.4 Approval Criteria

An extension shall be approved when all of the following criteria have been met:

A. There have been no significant changes on the subject property, in the vicinity of the subject property, or to any relevant regulations since the original application was approved.

B. No modifications are proposed to the approved application or to the conditions of approval.

C. If the previously approved application included a transportation impact study or a water quality resource report, an updated report was provided with the extension application that shows no significant changes on the subject property or in the vicinity of the subject property. A letter from a recognized professional will also satisfy this criterion if it states that conditions have not changed since the original approval and that no new analysis is warranted.

## 19.909 MODIFICATIONS TO EXISTING APPROVALS

[New text. Complete section below—no underlining.]

### 19.909.1 Purpose Statement

The purpose of this section is to provide an appropriate and efficient review process for modifying approved land use applications and development plans after approvals have been obtained but prior to issuance of development permits.

### 19.909.2 Applicability

A. Modifications Requiring Submittal of New Application

A modification application is required for any land use application that was approved pursuant to Titles 14, 17, or 19 of the Milwaukie Municipal Code through a Type I, II, or III review and that has been subsequently modified such that the proposal no longer substantially conforms to the plans and/or other development documents upon which the original proposal was evaluated and approved.

B. Exceptions

A modification application is not required when modifications are required by City staff during development review for compliance with conditions of approval, development standards, Public Works Standards, or any other applicable standards that the City has the authority to implement at the time of development.

### 19.909.3 Review Process

A. General Provisions

1. The Planning Director shall determine whether the modified proposal substantially conforms to the plans and/or other development documents upon which the original proposal was evaluated and approved. This determination is not a land use decision and is not subject to appeal.
2. If the Planning Director determines that a modified proposal no longer substantially conforms to the original approval, the Planning Director shall require one of the following before approving any development permits:
    a. Submittal and approval of a modification application to modify the original approval per this section.
    b. Withdrawal of the original land use application and resubmittal of the application with the proposed modifications.
3. For a modification requiring review under this section, the Planning Director shall determine whether the modification is major or minor in nature. This determination is not a land use decision and is not subject to appeal.
    a. Major modifications are modifications that alter a condition of approval imposed by the Planning Commission, have different or more impacts than the original proposal, and/or require substantial changes to the findings from the original approval.
    b. Minor modifications are all modifications not otherwise identified as major modifications.

4. The scope of review for a modification application reviewed under this section is limited to the modified portions of the development proposal and any other portions of the development proposal that are affected by the modification.
5. Denial of a modification application does not invalidate the original approval.

B. Review Types

1. Major or Minor Modification of Original Type I Approval

   Major and minor modifications shall be evaluated through a Type I review per Section 19.1004.

2. Major or Minor Modification of Original Type II Approval

   Minor modifications shall be evaluated through a Type I review per Section 19.1004. Major modifications shall be evaluated through a Type II review per Section 19.1005.

3. Major or Minor Modification of Original Type III Approval

   Minor modifications shall be evaluated through either a Type I or Type II review per Section 19.1004 or 19.1005. The Planning Director shall determine the review type after considering the nature and scope of the modification. The Planning Director's determination shall favor the review type that provides the most appropriate public notice and opportunity for public comment. This determination is not a land use decision and is not subject to appeal. Major modifications shall be evaluated through a Type III review per Section 19.1006.

### 19.909.4 Approval Criteria

A. Approval Criteria for Minor Modifications

1. The proposed modification complies with all applicable development standards and requirements, except as modified by the original approval.
2. The proposed modification will continue to meet all applicable approval criteria upon which the original approval was based.
3. The proposed modification, as either proposed or conditioned, will not negatively impact nearby uses, protected natural features, or public facilities any more than what was identified in the original approval.
4. The proposed modification does not alter or contravene any conditions of approval from the original approval.

B. Approval Criteria for Major Modifications

1. The proposed modification complies with all applicable development standards and requirements, except as modified by the original approval.
2. The proposed modification will continue to meet all applicable approval criteria upon which the original approval was based.

### 19.909.5 Conditions of Approval

The review authority may impose conditions of approval that are suitable and necessary to ensure that the proposed modification will not cause the approved development proposal to fail to meet any approval criteria upon which the original approval was based or negatively impact nearby uses, protected natural features, or public facilities.

## 19.910 RESIDENTIAL DWELLINGS

[Four current residential dwelling types combined into one section, with new introductory text. Sources for the four individual subsections are described below.]

This section contains applications for types of residential dwellings that require land use approval.

### 19.910.1 Accessory Dwelling Units (Type 1)

[Current Subsection 19.402.4 renumbered as Subsection 19.910.1. Only amended text is shown below. See Exhibit D for complete section.]

D. Notwithstanding the maximum allowable ~~gross~~ net floor area of 600 sq ft, the accessory dwelling unit shall not exceed 40% of the gross floor area of the primary structure.

### 19.910.2 ~~Type 2~~ Accessory Dwelling Units (Type 2)

[Current Subsection 19.602.10 renumbered as Subsection 19.910.2. Only amended text is shown below. See Exhibit D for complete section]

Type 2 accessory dwelling units are only allowed in the base zones where they are listed as conditional uses. Where allowed, they are subject to conditional use review and approval per Section 19.905. A Type 2 accessory dwelling unit may be allowed in conjunction with a detached single-family dwelling by conversion of existing space, or by means of an addition.

### 19.910.3 Manufactured Dwelling Parks

[Current Section 19.405 renumbered as Subsection 19.910.3. No amendments. See Exhibit D for complete section.]

### 19.910.4 Temporary Dwelling Units ~~Provisions~~

[Current Section 19.404 renumbered as Subsection 19.910.4. Only amended text is shown below. See Exhibit D for complete section.]

C. Review Process

Applications for temporary structures shall be evaluated through a Type I review per ~~processed according to~~ Section 19.1004. Temporary permits that exceed the 6-month time period allowed under Subsection 19.910.4.A shall be evaluated through a Type III review per ~~must be reviewed by the Planning Commission under~~ Section 19.1006.

## 19.911 VARIANCES, ~~EXCEPTIONS, AND HOME IMPROVEMENT EXCEPTIONS~~

[Current Chapter 19.700 repealed and replaced as Section 19.911. Complete section below—no underlining.]

### 19.911.1 Purpose

Variances provide relief from specific code provisions that have the unintended effect of preventing reasonable development or imposing undue hardship. Variances are intended to provide some flexibility while ensuring that the intent of each development standard is met. Variances may be granted for the purpose of fostering reinvestment in existing buildings, allowing for creative infill development solutions, avoiding environmental impacts, and/or precluding an economic taking of property. Variances shall not be granted that would be detrimental to public health, safety, or welfare.

### 19.911.2 Applicability

A. Eligible Variances

Except for situations described in Subsection 19.911.2.B, a variance may be requested to any standard or regulation in Titles 17 or 19 of the Milwaukie Municipal Code, or any other portion of the Milwaukie Municipal Code that constitutes a land use regulation per ORS 197.015.

B. Ineligible Variances

A variance may not be requested for the following purposes:

1. To eliminate restrictions on uses or development that contain the word "prohibited."
2. To change a required review type.
3. To change or omit the steps of a procedure.
4. To change a definition.
5. To increase, or have the same effect as increasing, the maximum permitted density for a residential zone.
6. To justify or allow a Building Code violation.
7. To allow a use that is not allowed outright by the base zone. Requests of this nature may be allowed through the use exception provisions in Subsection 19.911.5, nonconforming use replacement provisions in Subsection 19.804.1.B.2, conditional use provisions in Section 19.905, or community service use provisions in Section 19.904.

C. Exceptions

A variance application is not required where other sections of the municipal code specifically provide for exceptions, adjustments, or modifications to standards either "by right" or as part of a specific land use application review process.

### 19.911.3 Review Process

A. General Provisions

1. Variance applications shall be evaluated through either a Type II or III review, depending on the nature and scope of the variance request and the discretion involved in the decision-making process.
2. Variance applications may be combined with, and reviewed concurrently with, other land use applications.
3. One variance application may include up to three variance requests. Each variance request must be addressed separately in the application. If all of the variance requests are Type II, the application will be processed through a Type II review. If one or more of the variance requests is Type III, the application will be processed through a Type III review. Additional variance requests must be made on a separate variance application.

B. Type II Variances

Type II variances allow for limited variations to numerical standards. The following types of variance requests shall be evaluated through a Type II review per Section 19.1005:

1. A variance of up to 40% to a side yard width standard.

2. A variance of up to 25% to a front, rear, or street side yard width standard. A front yard width may not be reduced to less than 15 ft through a Type II review.
3. A variance of up to 10% to lot coverage or minimum vegetation standards.
4. A variance of up to 10% to lot width or depth standards.
5. A variance of up to 10% to a lot frontage standard.

C. Type III Variances

Type III variances allow for larger or more complex variations to standards that require additional discretion and warrant a public hearing consistent with the Type III review process. Any variance request that is not specifically listed as a Type II variance per Subsection 19.911.3.B shall be evaluated through a Type III review per Section 19.1006.

**19.911.4 Approval Criteria**

A. Type II Variances

An application for a Type II variance shall be approved when all of the following criteria have been met:

1. The proposed variance, or cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.
2. The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.
3. Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.
4. Impacts from the proposed variance will be mitigated to the extent practicable.

B. Type III Variances

An application for a Type III variance shall be approved when all of the criteria in either Subsection 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

1. Discretionary Relief Criteria
   a. The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.
   b. The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:
      (1) The proposed variance avoids or minimizes impacts to surrounding properties.
      (2) The proposed variance has desirable public benefits.
      (3) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.
   c. Impacts from the proposed variance will be mitigated to the extent practicable.

2. Economic Hardship Criteria

   a. Due to unusual site characteristics and/or other physical conditions on or near the site, the variance is necessary to allow reasonable economic use of the property comparable with other properties in the same area and zoning district.

   b. The proposed variance is the minimum variance necessary to allow for reasonable economic use of the property.

   c. Impacts from the proposed variance will be mitigated to the extent practicable.

### 19.911.5 Use Exceptions

A. Applicability

A use exception is a type of variance intended to allow uses that are not allowed outright or conditionally by a property's base or overlay zones. Use exceptions shall not be granted to allow uses that are specifically prohibited by a property's base or overlay zones.

B. Review Process

A use exception shall be evaluated through a Type III review per Section 19.1006.

C. Approval Criteria

Economic hardship shall not be a primary basis for allowance of a use exception nor shall circumstances of which the applicant had prior knowledge be considered upon application. The Planning Commission may authorize exceptions to uses established by Title 19 upon a determination that all of the following criteria have been met:

1. Exceptional circumstances exist on or near the property over which the property owner has no control.
2. None of the allowed or conditionally allowed uses for which the property is zoned are practicable.
3. The proposed use will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.
4. Impacts from the proposed use will be mitigated to the extent practicable.

## CHAPTER 19.1000 ~~ADMINISTRATIVE PROVISIONS~~REVIEW PROCEDURES

[Current Chapter 19.1000 repealed and replaced. Complete chapter below—no underlining.]

### 19.1001 GENERAL PROVISIONS

#### 19.1001.1 Purpose

The purpose of this chapter is to establish procedures for the review and processing of land use applications. This chapter is intended to make the land use review process clear and understandable, to facilitate timely review of land use applications by the City, and to enable the public to participate in the local land use decision-making process. The provisions contained in this chapter are intended to be consistent with Oregon law regulating land use review.

#### 19.1001.2 Applicability

All land use applications shall be reviewed using the procedures contained in this chapter.

### 19.1001.3 Consistency with Statute

The processing of applications and permits authorized under Titles 14, 17, and 19 shall be consistent with the Oregon Revised Statutes (ORS). The City shall follow the provisions of the ORS in instances where following the provisions of this chapter alone would fail to meet State requirements for the processing or review of land use applications or permits.

### 19.1001.4 Review Types

All land use applications have both a review type and an application type. This chapter establishes the review procedures associated with each review type. Chapter 19.900 contains a list of application types and their associated review types.

A. Review Types

There are five types of review: Types I, II, III, IV, and V. Table 19.901 contains a list of the City's land use applications and their associated review types.

B. Determination

When a review type for a land use application is not specified in Table 19.901, or otherwise required by law, the Planning Director shall determine the review type. This determination is not applicable to the determination of whether a Comprehensive Plan map or Zoning Map amendment is a quasi-judicial or legislative matter, as described in Subsections 19.902.4 and 19.902.6. The Planning Director's determination shall favor the review type that provides the most appropriate public notice and opportunity for public comment. The Director's review type determination is not a land use decision per ORS 197.015 and is not subject to appeal.

C. Notice

The notice requirements in this chapter shall be the minimum amount of notice required for each specific review type. The City may provide notice in excess of the minimum requirement.

### 19.1001.5 Review and Appeal Authorities

A. The review authority for each review type is listed in Table 19.1001.5. The review authority is also the decision authority, except for Type IV and V reviews as described below.

B. The appeal authority for each review type is listed in Table 19.1001.5. The decision of the appeal authority is the City of Milwaukie's final decision for a permit, land use action, or zone change. Parties with standing may appeal the City's final decision to the Oregon Land Use Board of Appeals or other court.

**Table 19.1001.5**
**Land Use Application Review and City Appeal Authorities**

| Review Type | Review Authority | Appeal Authority |
|---|---|---|
| Type I | Planning Director | Planning Commission |
| Type II | Planning Director | Planning Commission |
| Type III | Planning Commission | City Council |
| Type IV | City Council, with initial hearing and recommendation by Planning Commission | None |
| Type V | City Council, with initial hearing and recommendation by Planning Commission | None |

### 19.1001.6 Applications

A. Initiation

Type I, II, III, and IV applications may be initiated by the property owner or contract purchaser of the subject property, any person authorized in writing to represent the property owner or contract purchaser, and any agency that has statutory rights of eminent domain for projects they have the authority to construct. Type III and IV applications involving map amendments may also be initiated by the Milwaukie City Council, Planning Commission, or Planning Director.

Type V applications may be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

B. Review of Multiple Applications

When multiple land use applications are required for a single proposal, the applicant may request, or the City may require, that the applications be processed concurrently or individually.

The City shall generally allow applicants the choice of having multiple applications for a single proposal processed concurrently or individually. The City may require that applications be reviewed concurrently for proposals where a review of an application(s) would be difficult without the context of the other applications related to the proposal. Alternatively, the City may require parts of an application to be processed separately in order to comply with the 120-day decision requirement or to allow decisions on parts of a proposal to be made with a lower level of review.

1. Applications Processed Concurrently

   A concurrent application review consolidates the review of multiple applications into a single review process. The applications shall be processed according to the highest numbered review type required for any part of the application. For example, a concurrent review of a Type II review and a Type III review would be processed through a Type III review. A single decision shall be issued that includes findings for all of the applications that are part of the concurrent review.

   The applicant shall submit an application form and application fee for each application type being reviewed. The application shall contain the information and documentation required for each individual application type.

2. Applications Processed Individually

   Multiple applications related to a single proposal may be submitted individually at the same time or at different points in time. Each individual application, or group of concurrent applications, shall be processed according to their specified review type. Any concurrent applications shall be processed as specified in Subsection 19.1001.6.B.1. For each application or group of concurrent applications, the review authority will issue a separate decision.

   The applicant shall submit an application form and application fee for each application type being reviewed. The application shall contain the information and documentation required for each individual application type.

C. Notice Requirements

1. Sign Notice

a. Notice of Type II, III, and IV applications, and some Type V applications, shall be posted on the subject property by the applicant per Sections 19.1005-19.1008 respectively.

b. Signs shall be posted in a location which is clearly visible to vehicles traveling on a public street and legible to pedestrians walking by the property. If the sign is providing notice of a public hearing, the sign shall include the date, time, and place of the hearing. The number and size of signs shall be appropriate given the size of the property, the number of street frontages, and the functional classification of surrounding streets. The City shall provide the applicant at least 1 sign and instructions for posting. An affidavit of posting shall be submitted by the applicant prior to the issuance of the decision and made part of the case file.

c. If the affidavit of posting is not submitted on time or if the required number and type of notice signs are not posted for the required period of time, the City may require an extension of the 120-day decision requirement, delay the decision, and/or postpone or continue the public hearing on the application as necessary. The applicant will be required to repost the notice signs as necessary to meet the requirements of Sections 19.1005-19.1008 respectively.

d. The Planning Director shall adopt administrative rules for sign postings. The rules shall ensure that sign postings are consistent in appearance, legible to the public, and appropriate for the type and location of development being proposed. They will also ensure that the applicant's affidavit contains all necessary information, including but not limited to photographic documentation, to confirm that the requirements of this subsection have been met.

2. Mailed Notice

Where a review type in this chapter specifies that mailed notice of an application or hearing is required, the notice is deemed to have been provided upon the date the notice is deposited in the mail. Failure of the addressee to receive such notice shall not invalidate the proceedings if it can be demonstrated by affidavit that notice to the required parties was deposited in the mail. Notice to surrounding property owners shall be provided using the most recent property ownership information from the County Assessor that is available to the City.

D. Additional Requirements

For applications where the subjective aspects of the height and mass of the proposed development will be evaluated at a public hearing, temporary on-site "story pole" installations that simulate the proposed development, and photographic representations thereof, may be required prior to the public hearing.

### 19.1001.7 Decisions

A. Conditions of Approval

The review authority shall impose conditions of approval on an application as necessary to ensure conformance with relevant approval criteria and development standards.

B. Applicable Standards and Criteria

Approval or denial of all ministerial or quasi-judicial applications, as defined by the ORS, shall be based upon the development standards and approval criteria that were in effect at the time the application was first submitted.

C. 120-Day Decision Requirement

The City shall take final action on land use actions subject to ORS 227.178, including resolution of all local appeals, within 120 days after the application has been deemed complete, unless the applicant provides a written statement consenting to an extension of the 120-day decision requirement. The total of all extensions, except as provided for mediation per ORS 227.178(11), shall not exceed 245 days.

D. Effective Date of Decisions

Decisions on land use applications become effective as described below.

1. The day after the appeal period expires, if no appeal is filed.
2. The day the decision is issued by the City's final appeal authority, if an appeal is filed.

E. Expiration of Approved Decisions

1. Type I, II, III, and IV land use approvals granted pursuant to this chapter for land use applications submitted on or after DATE, the effective date of Ordinance #_____, shall expire and become void unless the following criteria are satisfied:
   a. For proposals requiring any kind of development permit, the development must complete both of the following steps:
      (1) Obtain and pay for all necessary development permits and start construction within 2 years of land use approval.
      (2) Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval.
   b. For proposals not requiring development permits, the development must utilize its approvals within 4 years of land use approval.
2. Land use approvals shall expire as outlined above unless one of the following occurs:
   a. An extension is granted pursuant to Section 19.908.
   b. The review authority specifies a different expiration date in the land use decision to accommodate large, complex, or phased development projects.
   c. The expiration period for an approval is specified in another section of the municipal code.
3. The following land use approvals are exempt from expiration:
   a. Amendments to Comprehensive Plan maps or text; amendments to Titles 14, 17, or 19; or any other amendment to a land use regulation per Section 19.902.
   b. Code interpretations and Director determinations per Section 19.903.
   c. Annexations per Chapter 19.1100.

F. Extensions to Expiring Approvals

The time period during which a land use approval is valid may be extended per Section 19.908.

G. Modifications to Existing Approvals

A valid land use approval may be modified per Section 19.909.

H. Appeals of Decisions

Land use decisions may be appealed per Section 19.1010. An appeal of a final decision by the City may be made by any party with standing to other courts.

## 19.1002 PREAPPLICATION CONFERENCE

### 19.1002.1 Purpose

The purpose of the preapplication conference is to acquaint the applicant or applicant's representative with the requirements of the municipal code in preparation for submission of a land use application, including relevant approval criteria, development standards, and procedures. The preapplication conference is not an exhaustive review of all potential issues or requirements. Furthermore, the information provided by the City is not binding, and it does not preclude the City from raising new issues or identifying additional requirements during the land use review process.

### 19.1002.2 Applicability

A. For Type I applications, a preapplication conference is optional.

B. For Type II, III, IV, and V applications, and expedited annexations per Section 19.1104, a preapplication conference is required, with the following exceptions:

1. The Planning Director may waive the preapplication conference requirement for proposals that are not complex or, for some other reason, would not benefit from a formal conference.

2. A preapplication conference is not required for City-initiated Type IV or V applications.

### 19.1002.3 Preapplication Conference Procedures

The Planning Director shall adopt administrative rules for how the City processes preapplication conferences. The rules shall ensure that preapplication conferences are held in a timely fashion and provide a thorough explanation of all required City permits, fees, and approvals for any given development proposal. They shall include standards for scheduling, conducting, and communicating the outcomes of preapplication conferences.

### 19.1002.4 Preapplication Conference Expiration

A. A preapplication conference is valid for 2 years. If a land use application or development permit has not been submitted within 2 years of the conference date, the applicant is required to schedule a new preapplication conference prior to submittal. This requirement may be waived per Subsection 19.1002.2.B.1.

B. An applicant may request additional preapplication conferences at any time. There is no limit to the number of preapplication conferences that may be requested.

C. If a development proposal is significantly modified after a preapplication conference occurs, the Planning Director may require a new preapplication conference. The City may refuse to accept a land use application or development permit for a significantly altered development proposal until a new preapplication conference is held.

## 19.1003 APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

### 19.1003.1 Application Forms and Checklists

A. The City shall supply land use application forms pursuant to the standards contained in the applicable State law, Comprehensive Plan, and implementing ordinance provisions.

B. The City shall supply checklists or information sheets that specify the information that must be contained in the application, including format and number of copies.

### 19.1003.2 Application Submittal Requirements

All application information must be sufficiently detailed and specific to the development being proposed to allow for adequate public review. The application submittal must include all of the items listed below for the City to accept the application and initiate completeness review. If the application requires a public hearing, additional items may be required per Subsections 19.1001.6.C and D prior to the public hearing.

A. Application form, including signature(s) of the property owner or public agency initiating the application.

B. Deed, title report, or other proof of ownership.

C. Detailed and comprehensive description of all existing and proposed uses and structures, including a summary of all information contained in any site plans. The description may need to include both a written and graphic component such as elevation drawings, 3-D models, and photo simulations, etc. For applications where the subjective aspects of the height and mass of the proposed development will be evaluated at a public hearing, temporary on-site "story pole" installations that simulate the proposed development, and photographic representations thereof, may be required at the time of application submittal.

D. Detailed statement that demonstrates how the proposal meets all applicable approval criteria, zoning and land use regulations, and development standards.

E. Site plan(s), preliminary plat, or final plat as applicable.

F. All materials identified on the Submittal Requirements form, including the signature(s) of the applicant submitting the materials.

G. Payment of all applicable land use application fee(s) and deposit(s), based on the fee schedule in effect on the date of application submittal.

H. Copy of a valid preapplication conference report if one was required per Subsection 19.1002.2.

### 19.1003.3 Application Completeness Review

All applications are subject to the provisions of Subsections 19.1003.3.A-D below. Type I, II, III, and IV applications are also subject to the provisions of Subsections 19.1003.3.E-G below.

A. The City shall review the application submittal within 30 days of receipt of the application and advise the applicant in writing as to whether the application is complete or incomplete.

B. The City may determine that an application is incomplete based on any of the following:

1. Failure to pay the required fees or deposits.
2. Failure to address the relevant approval criteria or development standards.
3. Failure to supply the materials identified on the Submittal Requirements form.

C. Incompleteness shall not be based on differences of opinion as to quality or accuracy.

D. Determination that an application is complete indicates only that the application contains the information necessary to review it for compliance against applicable development standards and approval criteria.

E. If an application is incomplete, the completeness notice shall identify the information that is missing. The applicant has 180 days from the date of first submittal to make the application complete.

F. An application will be deemed complete by the City upon submission of any of the following:

1. All of the missing information.
2. Some of the missing information and written notice from the applicant that no other information will be provided.
3. Written notice from the applicant that none of the missing information will be provided.

G. An application will be deemed void if it has been on file with the City for more than 180 days and the applicant has not made the application complete per Subsection 19.1003.3.F. The City will not refund application fees for voided applications. The applicant may resubmit a voided application to the City; however, it will be treated as a new application and will be subject to all current fees, development standards, approval criteria, and submittal requirements.

**19.1003.4 Resubmittal of Applications Following Denial**

A. If an application for a land use action has been denied, an application for the same or similar project on the same property may not be resubmitted unless one or more of the following occurs:

1. 2 years have passed since the denial became final.
2. Substantial changes are made to the application. Substantial changes to an application have occurred only if the changes resolve all findings for denial of the original application.
3. Standards and criteria relative to the findings of the original denial have changed and now support the application.
4. For Type IV or V decisions, there has been a substantial change in the composition of the City Council and the Council was the final decision-maker. A substantial change in the composition of the Council occurs if fewer than three Council members who voted to deny the original application remain on the Council.

B. For purposes of Subsection 19.1003.4, a land use approval is denied when the City's final decision of denial is not appealed or is upheld on appeal. An application that was denied solely on procedural grounds, or which was expressly denied without prejudice, is not subject to this subsection.

**19.1003.5 Withdrawal of Applications Under Review**

A. An application may be withdrawn by the applicant at any time prior to issuance of the final decision with the written consent of the property owner or contract purchaser.

B. If an application is withdrawn after the City has mailed the public notice, the City shall send another notice to all parties who received the original notice that the application has been withdrawn.

C. The City may refund application fees if staff has, in writing, recommended withdrawal and an application is withdrawn prior to being referred for comment. In all other cases, the City will not refund application fees for withdrawn applications.

### 19.1003.6 Modifications to Applications Under Review

The procedures of this subsection shall apply if an applicant modifies an application after the City has deemed it complete but prior to a public hearing or issuance of a decision.

A. Upon receipt of materials that modify an application, the Planning Director shall evaluate the modifications, determine which of the 3 categories listed below describes the modification, and follow the related procedures. This decision is not a land use decision and is not appealable.

1. Substantial Modification

   A substantially modified application greatly differs from the application that was deemed complete. Such differences may include the land use; size, height, and/or design of proposed structures; location of uses and structures on the site; or other such characteristics of the proposal. Substantial modifications may alter which approval criteria and development standards apply to the development proposal.

   The Planning Director shall notify the applicant of this determination and take one of the following actions, at the direction of the applicant:

   a. Allow the applicant to withdraw the original application and submit the modified proposal as a new application. The applicant shall submit all items required by Subsection 19.1003.2 for the new submittal.

   b. Reject the modifications and continue processing the original application. Rejecting a substantial modification does not preclude the applicant from submitting significant or minor modifications.

2. Significant Modification

   Significant modifications change an application so that one or more aspects of the modified proposal differ from the original proposal, while the overall proposal remains similar to the proposal that was deemed complete. Significant modifications typically should not alter which approval criteria and development standards apply to the development proposal.

   The Planning Director shall notify the applicant of this determination and take one of the following actions, at the direction of the applicant:

   a. Accept the modifications and proceed with the review of the modified application. The applicant shall pay the required fee for review of a modified application per the adopted fee schedule. The Planning Director may repeat any part of the public notice or referral process to provide appropriate opportunity for public review of the modifications. The applicant shall also extend the 120-day decision requirement in writing to a date that is sufficient to allow for additional review, public notice, or evaluation by the City.

   b. Reject the modifications and continue processing the original application. Rejecting a significant modification does not preclude the applicant from submitting minor modifications.

3. Minor Modification

   Minor modifications change an application so that a limited number of aspects differ from the original proposal and the differences are small relative to the original proposal. The magnitude of a minor modification should be small enough that another review of the proposal by other agencies or the public is not warranted.

   The Planning Director shall notify the applicant of this determination and take one of the following actions, at the direction of the applicant:

   a. Accept the modifications and proceed with the review of the modified application. The applicant shall extend the 120-day decision requirement in writing to a date that is sufficient to allow for additional review or evaluation by the City.

   b. Reject the modifications and continue processing the original application.

B. In addition to the procedures of Subsection 19.1003.6.A, modifications received after the issuance of a staff report for a public hearing are subject to the following provisions:

   1. If an applicant submits a substantial modification and chooses the option listed in Subsection 19.1003.6.A.1.a, the hearing shall be cancelled or suspended without the issuance of a decision by the review authority.

   2. If an applicant submits a significant or minor modification and chooses the option listed in Subsection 19.1003.6.A.2.a or 3.a, the Planning Director may do any of the following:

      a. If the hearing has been opened:

         (1) Proceed with the hearing and allow a decision. The record may be left open at the request of any hearing participant to allow other parties a reasonable opportunity to respond.

         (2) Continue the hearing to a future date to allow other parties a reasonable opportunity to respond.

      b. If the hearing has not been opened:

         (1) Open the hearing as scheduled and proceed per Subsection 19.1003.6.B.2.a.

         (2) Reschedule the hearing to open at a later date.

### 19.1004 TYPE I REVIEW

Type I applications involve permitted uses or development governed by clear and objective approval criteria and/or development standards that may require the exercise of professional judgment about technical issues. Type I review provides for ministerial review of an application by the Planning Director and does not include public notice.

#### 19.1004.1 Preapplication Conference

A preapplication conference is not required for Type I applications.

#### 19.1004.2 Type I Application Requirements

A. Type I applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.

B. Type I applications are subject to completeness review per Subsection 19.1003.3.

### 19.1004.3 Type I Public Notice

Public notice is not required for Type I applications.

### 19.1004.4 Type I Review Authority

A. The review authority for all Type I applications shall be the Planning Director.

B. The Planning Director shall approve, approve with conditions, or deny an application based on applicable approval criteria and development standards.

### 19.1004.5 Type I Decision

Written notice of the decision for Type I applications shall be provided to the applicant and property owner of record. The decision shall be issued with sufficient time to allow the appeal authority for a Type I application to issue a final decision within 120 days from when the application was deemed complete. The decision shall include the following information:

A. A brief summary of the proposal.

B. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.

C. A statement of the facts upon which the review authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.

D. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.

E. The date the decision shall become final, unless appealed. The decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.

F. A statement that the complete case file, including findings, conclusions, and conditions of approval, if any, is available for review. The decision shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

### 19.1004.6 Appeal of a Type I Decision

A Type I decision may be appealed by filing a written appeal within 15 days from the date that the notice of decision was mailed. The appeal authority for a Type I decision is the Planning Commission. Appeal requirements and procedures are outlined in Section 19.1010.

## 19.1005 TYPE II REVIEW

Type II applications involve uses or development governed by subjective approval criteria and/or development standards that may require the exercise of limited discretion. Type II review provides for administrative review of an application by the Planning Director and includes notice to nearby property owners to allow for public comment prior to the decision. The process does not include a public hearing.

### 19.1005.1 Preapplication Conference

A preapplication conference is required for all Type II applications per Section 19.1002. The Planning Director may waive this requirement.

### 19.1005.2 Type II Application Requirements

A. Type II applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.

B. Type II applications are subject to completeness review per Subsection 19.1003.3.

### 19.1005.3 Type II Public Notice

A. Referral

Within 7 days after the application has been deemed complete, the City shall 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. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

B. Mailed Notice

The purpose of the public notice is to provide nearby property owners and other interested parties with an opportunity to review the application and submit written comments concerning the application prior to issuance of the Type II decision. The goal of this notice is to invite relevant parties of interest to participate in the process.

1. Within 7 days after the application has been deemed complete, public notice of the application shall be mailed to the following parties:
   a. The applicant and/or the applicant's authorized representative.
   b. The owner(s) of record of the subject property.
   c. Owners of record of properties within 300 ft of the perimeter of the subject property.
   d. Neighborhood district associations to which the application was referred.
2. The public notice shall include the following information:
   a. The case file number and a brief summary of the proposal.
   b. A brief description of the subject property, including street address, if available, map and tax lot number, and zoning designation.
   c. A statement that the City will consider written comments submitted prior to the issuance of the decision, and that the decision may be issued as early as 14 days from the date of the public notice.
   d. The place, date, and time that comments are due.
   e. The applicable approval criteria and/or development standards against which the proposal will be evaluated.

f. A statement that all application materials and applicable approval criteria and development standards are available for review at the City, and that copies can be obtained at a reasonable cost.

g. The name and phone number of the City representative to contact for additional information.

h. The following statement: "Notice to mortgagee, lien holder, vendor or seller: The Milwaukie Municipal Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

C. Sign Notice

No more than 7 days after the application has been deemed complete, notice of the application shall be posted on the subject property by the applicant and shall remain continuously posted until the decision is issued. Sign notice shall meet the requirements of Subsection 19.1001.6.C.1.b.

**19.1005.4 Type II Review Authority**

A. The review authority for Type II applications shall be the Planning Director.

B. A decision will not be issued sooner than 14 days after mailing of the public notice and referral. Once issued, the decision is final and may only be reconsidered by appeal. Comments submitted within 14 days of the date of the public notice shall be considered. Comments submitted after 14 days from the date of the public notice and prior to the issuance of the decision may be considered.

C. The review authority shall approve, approve with conditions, or deny an application based on applicable approval criteria, development standards, and written comments received.

**19.1005.5 Type II Decision**

A. The decision shall be issued with sufficient time to allow the appeal authority for a Type II application to issue a final decision within 120 days from the date that the application was deemed complete.

B. Written notice of decision shall be mailed to the following parties. The date the notice is mailed shall be considered the date of the decision.

1. The applicant and/or the applicant's authorized representative.
2. The owner(s) of record of the subject property.
3. Any group or individual who submitted written comments during the comment period.
4. Any governmental agency that is entitled to notice by the municipal code or has requested notice of the decision.
5. Any group or individual who requested notice of the decision.

C. The notice of decision shall include the following information:

1. A description of the proposal with sufficient detail to explain the applicant's proposal.
2. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
3. A statement of the facts upon which the review authority relied to determine whether the application satisfied, or failed to satisfy, each applicable approval criterion.

4. The decision to approve or deny the application and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
5. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
6. A statement that any person who is adversely affected or aggrieved by the decision may appeal the decision by filing a written appeal within the 15-day appeal period.
7. A statement that the complete case file is available for review, including findings, conclusions, and conditions of approval, if any. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

### 19.1005.6 Appeal of a Type II Decision

A Type II decision may be appealed by filing a written appeal within 15 days from the date that the notice of decision was mailed. The appeal authority for a Type II decision is the Planning Commission. Appeal requirements and procedures are outlined in Section 19.1010.

## 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.

### 19.1006.1 Preapplication Conference

A preapplication conference is required for Type III applications per Section 19.1002.

### 19.1006.2 Type III Application Requirements

A. Type III applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.

B. Type III applications are subject to completeness review per Subsection 19.1003.3.

### 19.1006.3 Type III Public Notice

A. DLCD Notice

For Zoning Map amendments, the City shall provide notification to the Department of Land Conservation and Development at least 45 days prior to the first public hearing on adoption.

B. Metro Notice

For Zoning Map amendments, the City shall provide notification to Metro at least 45 days prior to the initial evidentiary hearing on adoption.

C. Referral

Within 7 days after the application has been deemed complete, the City shall 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. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

D. Mailed Notice

The purpose of the public notice is to provide nearby property owners and other interested parties with an opportunity to review the application, submit written comments, and participate in the proceedings concerning the Type III decision. The goal of this notice is to invite relevant parties of interest to participate in the process.

1. At least 20 days prior to the first public hearing on the application, public notice of the application shall be mailed to the parties listed below. Notice requirements specific to Zoning Map amendments are listed in Subsection 19.1006.3.D.3.
   a. The applicant and/or applicant's authorized representative.
   b. The owner(s) of record of the subject property.
   c. Owners of record of properties located within 300 ft of the perimeter of the subject property.
   d. Neighborhood district associations to which the application was referred.
2. The public notice shall include the following information:
   a. The case file number and a brief summary of the proposal.
   b. A brief description of the subject property, including street address, if available, map and tax lot number, and zoning designation.
   c. The date, time, and place of the hearing.
   d. A statement that any member of the public may submit written comments prior to the hearing and may appear and provide written or oral testimony at the hearing.
   e. A statement that only those who have submitted written comments prior to the hearing or participated at the hearing shall be entitled to appeal.
   f. A general explanation of the requirements for submission of testimony and the procedure for conduct of public hearings.
   g. A statement that a copy of the staff report will be available for review at no cost, and a copy will be provided at a reasonable cost, at least 7 days prior to the hearing.
   h. The applicable approval criteria and/or development standards against which the proposal will be evaluated.

i. A statement that all application materials and applicable approval criteria and development standards are available for review at the City, and that copies can be obtained at a reasonable cost.

j. The name and phone number of the City representative to contact for additional information.

k. The following statement: "Notice to mortgagee, lien holder, vendor or seller: The Milwaukie Municipal Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

3. Notice requirements specific to Zoning Map amendments are as follows:

a. At least 20 days prior to the first public hearing on the application, public notice of an application that conforms to Subsection 19.1006.3.D.2 shall be mailed to the following parties:

(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 400 ft of the perimeter of the subject property.

(4) Neighborhood district associations to which the application was referred.

b. A Measure 56 notice that conforms to Subsection 19.1008.3.D shall be mailed at least 20 days, but not more than 40 days, prior to the first public hearing on the application to all owners of property affected by the proposal.

c. For applications that would change the zoning designation of a property that includes all or part of a mobile home or manufactured dwelling park, the City shall mail written notice to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days, but not more than 40 days, prior to the date of the first public hearing on the application. This notice shall conform to the requirements of Subsection 19.1008.3.D.

4. The City shall prepare an affidavit of mailing of notice for the file. The affidavit shall indicate the date that the public notice was mailed to the parties required by Subsection 19.1006.3.D.

E. Notice Sign

At least 14 days prior to the hearing, notice of the application shall be posted on the subject property by the applicant and shall remain continuously posted until the hearing. Sign notice shall meet the requirements of Subsection 19.1001.6.C.1.b

**19.1006.4 Type III Review Authority**

A. The review authority for Type III applications shall be the Planning Commission.

B. The review authority shall approve, approve with conditions, or deny an application subject to a Type III review after the public hearing.

**19.1006.5 Type III Decision**

A. The decision shall be issued with sufficient time to allow the appeal authority for a Type III application to issue a final decision within 120 days from the date that the application was deemed complete.

B. Written notice of decision shall be mailed to the following parties within 7 days of the date of the decision:

1. The applicant and/or the applicant's authorized representative.
2. The owner(s) of record of the subject property.
3. Any group or individual who submitted written comments at or prior to the public hearing.
4. Any group or individual who submitted oral testimony during the public hearing.
5. Any governmental agency which is entitled to receive notice per the municipal code or has requested notice of the decision.
6. Any group or individual who requested notice of the decision, including those who signed the attendance sheet at any public hearing on the application.

C. The notice of decision shall include the following information:

1. A description of the proposal with sufficient detail to explain the applicant's proposal.
2. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
3. A statement of the facts upon which the review authority relied to determine whether the application satisfied, or failed to satisfy, each applicable approval criterion.
4. The decision to approve or deny the application and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
5. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
6. A statement that only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal within the 15-day appeal period.
7. A statement that the complete case file is available for review, including findings, conclusions, and conditions of approval, if any. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

D. In addition to the requirements of Subsections 19.1006.5.A, B, and C, the following requirements apply to Zoning Map amendments evaluated through a Type III review process.

1. Following the close of the appeal period for a Zoning Map amendment for which no appeal was filed, the Planning Director shall prepare an ordinance to enact the approved Zoning Map amendment.
2. The ordinance shall be publicized per Milwaukie Charter, Chapter VIII, Section 31, Subsection (c). The ordinance shall be brought before Council at the first meeting following the close of the appeal period that meets the notice requirements of Milwaukie Charter, Chapter VIII, Section 31, Subsection (c).
3. The City Council shall enact the ordinance per the procedures of Milwaukie Charter, Chapter VIII, Section 31, Subsection (b), with the reading being by title only.

### 19.1006.6 Appeal of a Type III Decision

A Type III decision may be appealed by filing a written appeal within 15 days from the date that the notice of decision was mailed. Only the applicant or persons who submitted comments or made an appearance of record at the public hearing have standing to appeal a Type III decision. Appeal requirements and procedures are outlined in Section 19.1010.

## 19.1007 TYPE IV REVIEW

Type IV applications involve amendments to the City's zoning or land use maps. They are quasi-judicial in nature and require an initial hearing by the Planning Commission and a final decision by the City Council. They typically require a great detail of professional analysis, are reviewed against subjective approval criteria, and have a broader impact on the City's overall land use pattern than Type III Zoning Map amendments. The review process requires notice to nearby property owners and at least two public hearings.

### 19.1007.1 Preapplication Conference

A preapplication conference is required for Type IV applications per Section 19.1002.

### 19.1007.2 Type IV Application Requirements

A. Type IV applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.

B. Type IV applications are subject to completeness review per Subsection 19.1003.3.

### 19.1007.3 Type IV Public Notice

A. DLCD Notice

For Zoning Map or Comprehensive Plan map amendments, the City shall provide notification to the Department of Land Conservation and Development at least 45 days prior to the first public hearing on adoption.

B. Metro Notice

For Zoning Map or Comprehensive Plan map amendments, the City shall provide notification to Metro at least 45 days prior to the initial evidentiary hearing on adoption.

C. Referral

Within 7 days after the application has been deemed complete, the City shall 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. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

D. Mailed Notice

The purpose of the public notice is to provide nearby property owners and other interested parties with an opportunity to review the application, submit written comments, and

participate in the proceedings concerning the Type IV decision. The goal of this notice is to invite relevant parties of interest to participate in the process.

1. At least 20 days prior to a public hearing on the application, public notice of the application shall be mailed to the parties listed below. Notice requirements specific to Zoning Map amendments are listed in Subsection 19.1007.3.D.3.
   a. The applicant and/or applicant's authorized representative.
   b. The owner(s) of record of the subject property.
   c. Owners of record of properties located within 400 ft of the perimeter of the subject property.
   d. Neighborhood district associations to which the application was referred.
2. The public notice shall include the following information:
   a. The case file number and a brief summary of the proposal.
   b. A brief description of the subject property, including street address, if available, map and tax lot number, and zoning designation.
   c. The date, time, and place of the hearing.
   d. A statement that any member of the public may submit written comments prior to the hearing and may appear and provide written or oral testimony at the hearing.
   e. A statement that only those who have submitted written comments prior to the hearing or participated at the hearing shall be entitled to appeal.
   f. A general explanation of the requirements for submission of testimony and the procedure for conduct of public hearings.
   g. A statement that a copy of the staff report will be available for review at no cost, and a copy will be provided at a reasonable cost, at least 7 days prior to the hearing.
   h. The applicable approval criteria and/or development standards against which the proposal will be evaluated.
   i. A statement that all application materials and applicable approval criteria and development standards are available for review at the City, and that copies can be obtained at a reasonable cost.
   j. The name and phone number of the City representative to contact for additional information.
   k. The following statement: "Notice to mortgagee, lien holder, vendor or seller: The Milwaukie Municipal Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."
3. Notice requirements specific to Zoning Map amendments are as follows:
   a. A Measure 56 notice that conforms to Subsection 19.1008.3.D shall be mailed at least 20 days, but not more than 40 days, prior to the first public hearing on the application to all owners of property affected by the proposal.
   b. For applications that would change the zoning designation of a property that includes all or part of a mobile home or manufactured dwelling park, the City shall mail written notice to each existing mailing address for tenants of the mobile home

or manufactured dwelling park at least 20 days, but not more than 40 days, prior to the date of the first public hearing on the application. This notice shall conform to the requirements of Subsection 19.1008.3.D.

4. The City shall prepare an affidavit of mailing of notice for the file. The affidavit shall indicate the date that the public notice was mailed to the parties required by Subsection 19.1007.3.D.

E. Sign Notice

At least 14 days prior to the hearing, notice of the application shall be posted on the subject property by the applicant and shall remain continuously posted until the hearing. Sign notice shall meet the requirements of Subsection 19.1001.6.C.1.b.

**19.1007.4 Type IV Review Authority**

A. The review authority for Type IV applications shall be the City Council.

B. The review authority shall approve, approve with conditions, or deny an application subject to a Type IV review after the public hearing.

**19.1007.5 Type IV Decision**

A. The Planning Commission shall serve as the recommendation authority for Type IV applications.

B. The Planning Commission shall conduct an initial evidentiary hearing and provide a recommendation to the City Council with sufficient time to allow the City Council to issue a final decision within 120 days from the date that the application was deemed complete.

C. The Planning Commission may recommend that the City Council approve or deny the application with or without changes. The Planning Commission shall provide a written justification for the recommendation.

D. The City shall provide notice of the hearing before the City Council consistent with the public notice requirements in Subsections 19.1007.3.D and E, except that a second notice per Subsection 19.1007.3.D.3 is not required.

E. At the conclusion of the first public hearing before City Council, the City Council shall take one of the following actions:

1. Continue the matter to a date, time, and place certain.
2. Approve the application, with or without changes. City staff, with review from the City Attorney, shall prepare written findings that demonstrate how the application meets all applicable approval criteria.
3. Deny the application. City staff, with review from the City Attorney, shall prepare written findings that demonstrate how the application fails to meet any applicable approval criteria.

F. Written notice of decision shall be mailed to the following parties within 7 days of the date of the decision:

1. The applicant and/or the applicant's authorized representative.
2. The owner(s) of record of the subject property.
3. Any group or individual who submitted written comments at or prior to any public hearing.

4. Any group or individual who submitted oral testimony during any public hearing.
5. Any governmental agency which is entitled to receive notice per the municipal code or has requested notice of the decision.
6. Any group or individual who requested notice of the decision, including those who signed the attendance sheet at any public hearing on the application.

G. The notice of decision shall include the following:

1. A description of the proposal with sufficient detail to explain the applicant's proposal.
2. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
3. A statement of the facts upon which the review authority relied to determine whether the application satisfied, or failed to satisfy, each applicable approval criterion.
4. The decision to approve or deny the application and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
5. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
6. A statement that only persons who submitted comments or made an appearance of record at a public hearing on the application have standing to appeal the decision by filing a written appeal within the 15-day appeal period.
7. A statement that the complete case file is available for review, including findings, conclusions, and conditions of approval, if any. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.
8. A summary of the requirements for appealing the decision to the Land Use Board of Appeals.

### 19.1007.6 Appeal of a Type IV Decision

The City Council decision on a Type IV application is the City's final decision. A Type IV decision may be appealed to the Land Use Board of Appeals consistent with ORS 197 and OAR 661, as may be amended. Only the applicant or persons who submitted comments or made an appearance of record at a public hearing on the application have standing to appeal a Type IV decision.

## 19.1008 TYPE V REVIEW

Type V applications are legislative in nature and involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and Comprehensive Plan amendments that apply to more than just one property). Type V review applications are evaluated by the Planning Commission at an initial evidentiary hearing and then forwarded to the City Council for a decision at a public hearing. The review process requires broader public notice than other types of applications and at least two public hearings.

The City Council, Planning Commission, Planning Director, or any individual may initiate a Type V application to amend the Milwaukie Comprehensive Plan or Zoning Ordinance.

### 19.1008.1 Preapplication Conference

A preapplication conference is required for Type V applications that are initiated by any individual or party other than the City.

### 19.1008.2 Type V Application Requirements

A. Type V applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.

B. Type V applications are subject to completeness review per Subsection 19.1003.3.

### 19.1008.3 Type V Public Notice

A. General Public Notice

The purpose of general public notice for Type V applications is to allow the public, organizations, and other governmental agencies a meaningful opportunity to review and comment on legislative proposals.

1. The Planning Director shall provide opportunities for public review and input on legislative proposals at an early stage in the adoption process. This may include the referral process for Type III or IV applications; open houses; discussions with neighborhood district associations; work sessions with the City Council, Planning Commission, and other City boards and commissions; and/or direct communication with parties that may be affected by the proposal. This subsection is not prescriptive with regard to the timing or manner of public notice.
2. At least 30 days prior to a public hearing on a Type V application, the City shall provide notice of the hearing. At a minimum, the notice shall be available on the City web site and at City facilities that are open to the public and that customarily display public information. At a minimum, the notice shall include:
   a. The date, time, and place of the hearing.
   b. The case file number and summary of the proposal.
   c. A map showing the properties that will be impacted by the proposal if applicable.
3. Individual property owners shall be notified if the proposal involves a discrete geographic area or specific properties in the City. The Planning Director shall decide when individual property owner notification is warranted. The content of the notice shall be as described in Subsection 19.1008.3.A.2. The notice parties and timeline shall be as described in Subsections 19.1006.3.D.3.a and signage shall be provided as described in 19.1006.3.E.

B. DLCD notice

Notice of a Type V application shall be mailed to the Department of Land Conservation and Development at least 45 days prior to the initial evidentiary hearing on adoption.

C. Metro Notice

Notice of a Type V application shall be mailed to Metro at least 45 days prior to the initial evidentiary hearing on adoption.

D. Property Owner Notice (Measure 56)

At least 20 days but not more than 40 days before the initial evidentiary hearing on a Type V application, the City shall mail notice to owners of property within the City for which the proposed ordinance, if adopted, may, in the Planning Director's opinion, affect the

permissible uses of land for those property owners. The notice shall, at a minimum, include the following information:

1. A statement in bold type across the top of the first page of the notice that reads substantially as follows: "This is to notify you that the City of Milwaukie has proposed a land use regulation that may affect the permissible uses of your property or other properties."
2. The case file number and/or ordinance number.
3. A brief summary of the proposal, including how it may, if adopted, affect the permissible uses and value of property in the City.
4. The date, time, and place of the hearing.
5. A statement that a copy of the proposal is available for review at the City at no cost and that a copy can be obtained at a reasonable cost.
6. The name and phone number of the City representative to contact for additional information.
7. If applicable, a statement that the proposal is a result of an order of the Land Conservation and Development Commission.

E. The City shall prepare an affidavit of mailing of notice for the file. The affidavit shall indicate the date that the required property owner notice was mailed to the parties required by Subsection 19.1008.3.D.

**19.1008.4 Type V Decision Authority**

A. The review authority for Type V applications shall be the City Council

B. The review authority may approve, approve with conditions, amend, deny, or take no action on an application subject to a Type V review after the public hearing.

**19.1008.5 Type V Recommendation and Decision**

A. The following procedures apply to applications evaluated through a Type V review.

1. The Planning Commission shall serve as the recommendation authority for Type V applications.
2. The Planning Commission shall conduct an initial evidentiary hearing and provide a recommendation to the City Council within 180 days from the date that the application was deemed complete.
3. The Planning Commission may recommend that the City Council approve or deny the application with or without changes. The Planning Commission shall provide a written justification for the recommendation.
4. The City shall provide notice of the hearing before the City Council consistent with the public notice requirements in Subsection 19.1008.3.A.
5. At the conclusion of the first public hearing before City Council, the City Council shall take one of the following actions:
    a. Continue the matter to a date, time, and place certain.
    b. Remand the matter back to the recommendation authority for additional deliberation.

c. Approve the proposal, with or without changes. City staff, with review from the City Attorney, shall prepare the ordinance with written findings that demonstrate how the proposal meets all applicable approval criteria.

d. Deny the proposal.

e. Take no action on the proposal.

6. Not more than 5 days after the date of the approval or denial of the proposal, the City shall provide the required notice to the Department of Land Conservation and Development.

7. Within 7 days after the date of the approval or denial of the proposal, the City shall mail, or otherwise provide, notice to persons who testified orally or in writing to the recommendation or review authority while the public record was open regarding the proposal. The notice shall include the following information:

   a. A brief summary of the decision.

   b. If adopted:

      (1) The date and number of the adopting ordinance.

      (2) Where and when the adopting ordinance and related findings may be reviewed.

   c. A summary of the requirements for appealing the decision to the Land Use Board of Appeals.

**19.1008.6 Appeal of a Type V Decision**

The City Council decision on a Type V application is the City's final decision. A Type V decision may be appealed to the Land Use Board of Appeals consistent with ORS 197 and OAR 661, as may be amended. Only the applicant or persons who submitted comments or made an appearance of record at a public hearing on the application have standing to appeal a Type V decision.

**19.1009 PUBLIC HEARINGS**

**19.1009.1 Responsibility of City for Public Hearings**

The City shall:

A. Schedule land use applications for review and public hearing before the appropriate review authority as required per Table 19.1001.5.

B. Provide public notice of the public hearing consistent with the requirements in this chapter.

C. Prepare minutes for the public hearing that include the decision on the matter and the reasons for the decision.

D. Provide a copy of the notice of decision to all parties, consistent with the requirements in this chapter.

**19.1009.2 General Public Notice Requirements**

A. Notice of public hearings shall be provided as described in Sections 19.1006, 19.1007, 19.1008, and 19.1010.

B. All public notices shall be deemed to have been provided or received upon the date they were deposited in the mail or personally delivered, whichever occurs first.

### 19.1009.3 Rules of Procedure

A. Public hearings shall be conducted in accordance with the bylaws and rules of procedure adopted for the hearing body by City Council. Additionally, the provisions in Subsections 19.1009.4-13 below apply to all public hearings.

B. At the commencement of a hearing, a statement shall be made to those in attendance that:

1. Lists the applicable approval criteria.
2. States that testimony and evidence must be directed toward the applicable approval criteria or other criteria in the Zoning Ordinance or Comprehensive Plan that the person testifying believes is applicable to the proposal.
3. States that failure to raise an issue accompanied by testimony or evidence sufficient to afford the review authority an opportunity to respond to the issue precludes an appeal of the decision.

### 19.1009.4 Challenges to Impartiality

A. Except for Type V hearings, any hearing participant or a member of the hearing body may challenge the qualifications of a member of the hearing body to participate in the hearing and decision on the proposal. The challenge shall state the facts relied upon by the challenger relating to a person's bias, prejudgment, personal interest, ex parte contact or other facts from which the challenger has concluded that the member of the hearing body 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 hearing.

C. The hearing body shall deliberate and vote to decide whether or not the challenged person may remain a member of the hearing body for the decision on which their impartiality was challenged. The person who is the subject of the challenge may not vote on the motion.

### 19.1009.5 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.

### 19.1009.6 Ex Parte Contacts

Except for Type V hearings, the general public has a right to have the hearing body members unbiased by prehearing or ex parte contacts on proposals heard by them. This must be balanced with the public's right to access public officials on any matter. Therefore, hearing body members shall reveal any relevant prehearing or ex parte contacts at the commencement of the public hearing on the proposal. 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 public hearing on the proposal.

### 19.1009.7 Disqualification

Except for Type V hearings, disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of a hearing body present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

### 19.1009.8 Rights of Abstaining or Disqualified Member of the Hearing Body

A. An abstaining or disqualified member of the hearing body shall be counted for purposes of forming a quorum. A member who represents a personal interest at a hearing may do so only by making full disclosure to the hearing body, abstaining from voting on the proposal, vacating the seat on the hearing body, and physically joining the audience. A member representing a personal interest at a hearing shall not be counted for purposes of forming a quorum.

B. If all members of a hearing body abstain or are disqualified, all members present after stating their reasons for abstention or disqualification shall be requalified and shall proceed with the hearing.

### 19.1009.9 Absence of a Member of the Hearing Body

Except for Type V hearings, a member absent during the presentation of evidence or testimony in a hearing may not participate in the deliberations or decision unless the member has reviewed all the evidence or testimony received.

### 19.1009.10 Burden and Nature of Proof

Except for Type V applications, the applicant shall bear the burden of proof and persuasion that the proposal complies with applicable provisions of the municipal code. 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 development standards and approval criteria.

### 19.1009.11 Continuance of Hearing

A. Receipt of Additional Materials

All evidence, testimony, or documents relied upon by the applicant shall be submitted to the City and made available to the public. If additional evidence, testimony, or documents is provided by any hearing participant, the hearing body may allow a continuance or leave the record open for at least 7 days to allow other parties a reasonable opportunity to respond. The hearing body may ask the applicant to consider granting an extension of the 120-day decision requirement if a delay in proceedings could impact the ability of the City to take final action on the application, including resolution of any local appeals.

B. Request to Submit Additional Evidence or Testimony

Prior to closing the initial evidentiary hearing, any hearing participant may request an opportunity to present additional evidence or testimony regarding the application. The hearing body shall grant such request by continuing the public hearing or leaving the record open for additional written evidence or testimony pursuant to Subsection 19.1009.11.C below.

C. Granting of Continuance

If the hearing body grants a continuance, the hearing shall be continued to a date, time, and place certain, at least 7 days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new evidence or testimony is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open to submit additional written evidence or testimony for the purpose of responding to the new written evidence or testimony.

D. Leaving the Record Open

If the hearing body leaves the record open for additional written evidence or testimony, the record shall be left open for at least 7 days. Any participant may file a written request with the hearing body for an opportunity to respond to new evidence or testimony submitted during the period the record was left open. If such a request is filed, the hearing body shall reopen the record and any person may raise new issues which relate to the new evidence, testimony, or criteria for decision-making.

E. 120-Day Decision Requirement

Except for Type V applications, a continuance or extension granted pursuant to Subsection 19.1009.11 shall be subject to the limitations of the 120-day decision requirement unless the continuance or extension is requested or agreed to in writing by the applicant.

F. Final Arguments by Applicant

Unless waived by the applicant, the hearing body shall allow the applicant at least 7 days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final arguments shall be considered part of the record, but shall not include any new evidence. For purposes of Subsection 19.1009.11.F, "argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policies believed relevant by the applicant. "Argument" does not include facts. "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the applicant to be relevant to the decision.

**19.1009.12 Decision**

A. Following the close of the public portion of the hearing, the hearing body shall approve, conditionally approve, or deny the application. If the hearing is an appeal, the hearing body shall affirm, reverse, or remand the decision that is on appeal.

B. A final local decision on a Type I, II, III, or IV land use application shall be made within 120 days from the date the application was deemed complete, except that, with the agreement of the hearing body and the applicant or appellant, the processing of a matter under consideration may be extended per Subsection 19.1001.7.C.

C. Notice of decision shall be provided consistent with the requirements established for Type III, IV, and V applications and appeals in this chapter.

D. The hearing body shall prepare written findings for the decision. The findings shall include:

1. A statement of the applicable approval criteria against which the application was evaluated.
2. A statement of the facts that the hearing body relied upon to determine whether the application satisfied, or failed to satisfy, each applicable approval criterion and development standard.
3. The decision to approve, conditionally approve, or deny an application and the reasons for that decision.

**19.1009.13 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 hearing body.

## 19.1010 APPEALS

A decision on the approval of a Type I, II, or III application may be appealed by filing a written appeal with the City within 15 days of the date on the notice of decision. If the 15th day falls upon a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next day which is not a weekend or legal holiday. Table 19.1001.5 identifies the review authority and appeal authority for each review type.

### 19.1010.1 Filing an Appeal

A. An appeal application shall contain the following information:

1. Date and case file number of the decision being appealed.
2. Documentation that the person filing the application has standing to appeal per Subsections 19.1010.4.A, 5.A, and 6.A.
3. Detailed statement describing the basis of the appeal.
   a. For appeal of a Type I or III decision, the statement must identify which approval criterion or development standard is believed to have been overlooked or incorrectly interpreted or applied and/or which aspect of the proposal is believed to have been overlooked or incorrectly evaluated.
   b. For appeal of a Type II decision, the statement must identify either an error described in Subsection 19.1010.1.A.3.a or the manner in which the person filing the appeal was adversely impacted or aggrieved by the decision.

B. The appeal application fee shall be paid at the time of filing.

C. If the appeal application and applicable fee are not submitted within the 15-day appeal period, or if the appeal application does not contain the required items specified in Subsections 19.1010.1.A.1-3 above, the application shall not be accepted by the City. A decision by the City to not accept an appeal within the specified appeal period shall be final.

### 19.1010.2 General Procedures Applicable to All Appeals

Appeal hearings before the appropriate appeal authority, as specified in Table 19.1001.5, shall be conducted in accordance with the public hearing provisions in Section 19.1009.

### 19.1010.3 Types of Appeal Hearings

The City has two types of hearings used for appeals of land use decisions. The general procedures for these hearings are as follows.

A. Unrestricted De Novo Hearing

An unrestricted de novo hearing allows for the presentation of new evidence, testimony, and argument by any party. The appeal authority shall consider all relevant evidence, testimony, and argument that are provided at the hearing by the appellant or any party. The scope of the hearing shall not be limited to the issues that were raised on appeal. The standard of review for an unrestricted de novo hearing is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law.

B. On the Record De Novo Hearing

An on the record de novo hearing does not allow for the presentation of new evidence by any party. New testimony is allowed. New arguments are allowed based on evidence already in the record and testimony that is new or already in the record. The scope of the hearing is not limited to the issues that were raised on appeal. The standard of review for

an on the record de novo hearing is a new evaluation of existing evidence, new and existing testimony, and new and existing arguments.

### 19.1010.4 Specific Provisions for Appeal of a Type I Decision

A. A Type I decision may only be appealed by the applicant or the applicant's representative.

B. The City shall mail written notice of the appeal hearing to the applicant or the applicant's representative at least 20 days prior to the appeal hearing.

C. The appeal hearing shall be an unrestricted de novo hearing.

D. The decision of the designated appeal authority for appeals of Type I decisions shall be the final local decision.

### 19.1010.5 Specific Provisions for Appeal of a Type II Decision

A. A Type II decision may be appealed by the applicant, the applicant's representative, or any other person or organization who is adversely affected or aggrieved by the decision.

B. The City shall mail written notice of the appeal hearing to all parties who were entitled to Type II public notice per Subsection 19.1005.3.B.1 at least 20 days prior to the appeal hearing.

C. The appeal hearing shall be an unrestricted de novo hearing.

D. The decision of the designated appeal authority for appeals of Type II decisions shall be the final local decision.

### 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. The City shall mail written notice of the appeal hearing to all parties who were entitled to Type III public notice per Subsection 19.1006.3.D at least 20 days prior to the appeal hearing.

C. The appeal hearing shall be an on the record de novo hearing.

D. The record shall include:

1. A factual report prepared by the Planning Director.
2. All exhibits, materials, pleadings, memoranda, stipulations, and motions submitted by any party and reviewed or considered in reaching the decision under appeal.
3. The minutes from the original hearing and a detailed summary of the evidence and testimony.

E. The decision of the designated appeal authority for appeals of Type III decisions shall be the final local decision.

### 19.1010.7 Remand from the Land Use Board of Appeals

City of Milwaukie decisions remanded by the Land Use Board of Appeals shall be heard by the appeal authority following the procedures of Section 19.1009 and shall be decided within 90 days from the date of the remand.

## 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.

### 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, one of the following shall occur:

   1. The applicant may extend the 120-day decision requirement 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, 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 19.907.8.

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.

### 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 public notice shall meet the requirements of Subsections 19.1006.3.D and E.

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.

### 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 19.907.8.

**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.

**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.

**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.

**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.

### 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.

### 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 per Subsection 19.1001.7.C.

B. Design review meeting continuance proceedings shall be per Subsection 19.1009.11.

### 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.

### 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.

## CHAPTER 19.1100 ANNEXATIONS AND BOUNDARY CHANGES

[Current Chapter 19.1500 renumbered as Chapter 19.1100. Only amended text is shown below. See Exhibit D for complete chapter.]

### 19.1102.1 Administration and Approval Process

A. Annexation petitions shall include a request for Comprehensive Plan and zoning designations, and shall be reviewed by the Planning Commission and the City Council in

accordance with Section 19.1007 Type IV Review ~~Subsection 19.1011.4 Major Quasi-judicial Review~~. The Council decision on the proposal shall be considered the "final decision," for purposes of compliance with Metro Code Chapter 3.09.

B. Notice of the Planning Commission and Council hearings to consider annexation proposals shall follow the procedures of Section 19.1007 Type IV Review ~~Subsection 19.1011.4 Major Quasi-judicial Review~~ as well as the uniform notice requirements provided in Metro Code Section 3.09.030.

**19.1104.1 Administration and Approval Process, Subsection A:**

2. A prerequisite to the filing of an expedited boundary change petition is a preapplication conference, at which time the Planning Director shall explain the requirements and provide the appropriate forms. The preapplication conference requirement may be waived by the Planning Director pursuant to Subsection 19.1002.2.B.1 or may be met by requesting a preapplication meeting.

## CHAPTER 19.1200 SOLAR ACCESS PROTECTION

[Current Chapter 19.1300 renumbered as Chapter 19.1200. Only amended text is shown below. See Exhibit D for complete chapter.]

**19.1204.10 Application and Review Process**

An application for a building permit shall include the information necessary to meet the provisions of Subsection 19.1204.4, and shall be processed pursuant to Section 19.1004 Type I Review ~~of this title~~. The Building Official shall refer the plan to the Director for review and approval prior to issuing a building permit, or the Director may delegate this responsibility for review and approval to the Building Official.

# Municipal Code Title 17 Land Division

## CHAPTER 17.04 ADMINISTRATION AND ENFORCEMENT

### 17.04.110 Determinations of Legal Status

Requests for determinations on the legal status of units of land shall be processed pursuant to Section 19.903 Code Interpretations and Director Determinations.

~~A. All requests for determination of the legal status of parcels or lots shall be submitted in writing to the Planning Director and shall be accompanied by the following:~~

~~1. The fee for Director determinations as adopted by the City Council;~~

~~2. Title report including related instruments of conveyance; and~~

~~3. A detailed written request specifically identifying what information is being sought.~~

~~B. On review of the request, the Planning Director may require additional information as needed to respond to the request.~~

## REFERENCE UPDATES

The following text amendments are also proposed to Title 17:

- All references to Title 19 chapter/section numbers updated.
- All references to review types updated.

**Amended text follows.**

**17.04.100:**

Legislative amendments to this title shall be made in accordance with Chapters ~~19.900 and~~ 19.1000 and Section 19.902.

**17.12.020:**

A. Applications for land division and property boundary changes shall be processed in accordance with Chapter 19.1000 Type I, Type II, and ~~Minor Quasi-judicial~~ Type III procedures as indicated in this section.

**17.12.020.B:**

1. ~~Minor Quasi-judicial~~ Type III review may be changed to Type II review, or a Type II review may be changed to a Type I review, upon finding the following:
2. ~~Minor Quasi-judicial~~ Type III review may be required in the following situations:

**Table 17.12.020**
**Boundary Change Review Procedures**

| Boundary Change Action | Type I | Type II | ~~Minor Quasi-judicial~~ Type III |
|---|---|---|---|

**17.12.020.D:**

1. Applications for preliminary partition plat shall be processed in accordance with ~~Subsection 19.1011.2~~ Section 19.1005 Type II ~~Administrative~~ Review. Should any associated application subject to ~~Minor Quasi-judicial~~ Type III review be submitted in conjunction with a partition, the partition application shall be processed according to ~~Subsection 19.1011.3~~ Section 19.1006 ~~Minor Quasi-judicial~~ Type III Review.

**17.12.020.E:**

Applications for subdivision preliminary plat applications shall be processed in accordance with ~~Subsection 19.1011.3~~ Section 19.1006 ~~Minor Quasi-judicial~~ Type III Review.

**17.12.020.F:**

Applications for final plats of partitions and subdivisions shall be processed in accordance with ~~Subsection 19.1011.1~~ Section 19.1004 Type I ~~Administrative~~ Review.

**17.16.020.A:**

The Planning Director shall review applications for consistency with submission requirements of this chapter. Application submissions that do not meet the requirements of this chapter shall be deemed incomplete for the purpose of ORS 227.178 and Chapter 19.1000 of this code. The Planning Director shall provide to the applicant notice of whether an application is complete or incomplete in accordance with ORS 227.178 and Subsection ~~19.1004~~ 19.1003.3.

**17.28.020:**

All land divisions and boundary changes that increase the number of lots shall be subject to the requirements and standards contained in Chapter ~~19.1400~~ 19.700 Public Facility Improvements and the Public Works Standards for improvements to streets, sidewalks, bicycle facilities, transit facilities, and public utilities.

**17.28.040.D:**

Lot shape standards may be adjusted subject to ~~Chapter 19.700~~ Section 19.911 Variances~~, Exceptions and Home Improvement Exceptions~~.

**17.28.060.A:**

Flag lot design shall be consistent with Subsection ~~19.403.11~~ 19.504.9.

**17.32.010:**

In addition to other requirements, improvements installed by the applicant, either as a requirement of these regulations or their own option, shall conform to the requirements of this title and to improvement standards and specifications in the Public Works Standards and Chapter ~~19.1400~~ 19.700 Public Facility Improvements. The improvements shall be installed in accordance with the following procedure:

**17.44.010:**

A variance of any provision of this title may only be granted in accordance with ~~Chapter 19.700~~ Section 19.911.

# Municipal Code Title 14 Signs

### 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 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. ~~Requests for adjustments in the downtown zones shall receive their first review from the Design and Landmarks Committee. The Design and Landmarks Committee shall make recommendations to the Planning Commission, which is the review authority, and may authorize adjustments to the requirements of this chapter.~~

C. 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, 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 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.

### REFERENCE UPDATES

The following text amendments are also proposed to Title 14:

- All references to Title 19 chapter/section numbers updated.
- All references to review types updated.

**Amended text follows.**

**14.08.040:**

The City Manager or the Planning Director shall have the power and duty to interpret and enforce the provisions of this chapter. ~~An appeal from a ruling by the City Manager or the Planning Director regarding a requirement of this chapter may be made only to the Planning Commission, who may hold a public hearing per the provisions of the Zoning Ordinance, Section 1011.3, Minor Quasi-judicial Review.~~

**14.08.050:**

An appeal of a ruling by the City Manager, Planning Director, or Planning Commission regarding a requirement of this chapter may be made per Section 19.1010 Appeals. ~~Any action or ruling of the Planning Commission pursuant to this chapter may be appealed to the City Council per the procedures in Section 19.1002 of the Zoning Ordinance.~~

**14.08.090:**

C. The standards of the underlying zone may be increased to the standards in Table 14.08.090.C~~, pursuant to Minor Quasi-judicial review by the Planning Commission, as specified in MMC Subsection 19.1011.3~~ per Section 19.1006 Type III Review.

**14.12.010:**

E. Banners on community service use properties, as defined in Subsection ~~19.321.2~~ 19.904.2, not exceeding a total display area of 40 square feet per face per site, and pennants not to exceed a length of 50 feet per site. Such banners and pennants may remain in place for 6 months or less in any 1 calendar year.

**14.16.060.H:**

3. Awning signs shall 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, ~~as provided in Subsection 19.1011.3~~ per Section 19.1006 ~~Minor Quasi-judicial~~ Type III Review, ~~and~~ according to the following criteria:

5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to ~~design~~ review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per ~~the procedures outlined in Subsection 19.1011.3~~ Section 19.1006 Type III Review, according to the following criteria:

**14.32.020:**

B. The review authority shall hold a public hearing for any adjustment request which is 25% or more of the required standard per the provisions of ~~Ordinance 1712, the Zoning Ordinance, Subsection 19.1011.3~~ Section 19.1006 ~~Minor Quasi-judicial~~ Type III Review~~, for any adjustment request which is 25% or more of the required standard~~. Adjustment requests of less than 25% from the required standard shall be reviewed by the Planning Director per the provisions ~~outlined in Subsection 19.1011.2,~~ of Section 19.1005 Type II ~~Administrative~~ Review~~, of the Zoning Ordinance~~. Within 5 days after a decision has been rendered with reference to a request for an adjustment, the City Manager or duly authorized representative shall provide the applicant with notice of the decision of the review authority.

# **MUNICIPAL CODE** (non-Planning titles)

## REFERENCE UPDATES

The following text amendments are also proposed to the non-Planning titles of the Municipal Code:

- All references to Title 19 chapter/section numbers updated.
- All references to review types updated.

**Amended text follows.**

**2.16.010.A.9:**

f. Review and make recommendation on all applications requesting designation or deletion of a landmark and placement or removal on the cultural resources inventory, as provided under Zoning Ordinance Subsection ~~19.323.5~~ 19.403.4,

g. Review and make recommendation on all applications requesting designation or deletion of an historic district as provided under Zoning Ordinance Subsection ~~19.323.5~~ 19.403.4,

i. Review all demolition permits affecting landmarks, as provided under Zoning Ordinance Subsection ~~19.323.8~~ 19.403.7,

**3.25.010:**

Dwelling Unit. As defined in Section ~~19.103~~ 19.201.

**12.16.050:**

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 ~~Chapter 19.700~~ Section 19.911.

**12.16.060:**

Appeal of any access management requirement or standard of Section 12.16.040 not associated with a land use decision is subject to the provisions of ~~Subsection 19.1011.3~~ Section 19.1006 ~~for Minor Quasi-judicial~~ Type III Review.

**13.14.025.B:**

All users of the public stormwater system, and any person or entity whose actions may affect the system, shall comply with all applicable federal, State, and local laws, including ~~MMC 19.322~~ Section 19.402 Water Quality Resource ~~Areas~~ Regulations. Compliance with the requirements of this chapter shall in no way substitute for, or eliminate the necessity for compliance with, applicable federal, State, and local laws.

**18.04.150.F.2.d:**

(2) The proposed excavation is authorized under applicable municipal code provisions including Section ~~19.322~~ 19.402, ~~Natural Resource Overlay Zone~~ Water Quality Resource Regulations; and

# Clean Amendments

# Comprehensive Plan

## CHAPTER 1—CITIZEN INVOLVEMENT

### OBJECTIVE #3—COMMUNICATION

Promote informed public participation in planning decisions by providing readily available publications and printed materials regarding current issues and proposed policies and providing for two-way communication between policy-makers and citizens.

**Policies**

1. Make planning documents available through City offices and public libraries. This includes, but is not limited to Plan inventories, planning background information, Staff reports and minutes of Planning Commission and Comprehensive Plan Review Committee meetings.
2. Keep the public informed of opportunities for involvement in land use planning using a range of available media including newspaper notices, the City web site, mailings, the City newsletter, television, and meetings.
3. Seek citizens' input on major land use issues through community organizations, service organizations, interest groups, neighborhood groups, etc. Provide opportunities for citizen participation in preparing and revising local land use plans and ordinances. Provide citizen involvement opportunities that are appropriate to the scale of a given planning effort. Large area plans, affecting a large portion of community residents and groups, require citizen involvement opportunities of a broader scope than that required for more limited land use decisions.
4. City Staff will communicate with citizens about land use policy changes and significant development proposals through a variety of media early on and throughout the decision-making process.
5. Provide timely and adequate public notice of proposed land use matters to ensure that all citizens have an opportunity to be heard on issues and actions that affect them.
6. Any citizen testifying at a public hearing regarding a land use issue will receive a copy of the outcome of the hearing and the findings and conclusions upon which the decision was based.

## CHAPTER 2—PLAN REVIEW AND AMENDMENT PROCESS

### OBJECTIVE #1—AMENDING THE PLAN

5. All proposed Comprehensive Plan text and map amendments will be considered at advertised public hearings before the Planning Commission and City Council.
6. All Comprehensive Plan text and map amendments will be processed per the procedures in the Zoning Ordinance.
7. All Comprehensive Plan text and map amendments will be evaluated based on the approval criteria in the Zoning Ordinance for approval of Comprehensive Plan amendments.

# Municipal Code Title 19 Zoning

## CHAPTER 19.100

## INTRODUCTORY PROVISIONS

**SECTIONS:**

**19.101 Title**
**19.102 Purpose**
**19.103 Applicability**
**19.104 Interpretation**
**19.105 Severability**
**19.106 Compliance**
**19.107 Zoning**

### 19.101 TITLE

This title shall be known and may be cited as the Zoning Ordinance of the City of Milwaukie, Oregon. This title and any amendments to it shall be adopted by ordinance. Amendments to this title shall be subject to the provisions of Section 19.902.

### 19.102 PURPOSE

This title implements the Comprehensive Plan, which provides the policy framework within which land use and development review is conducted in the city. Amendments to the Comprehensive Plan shall be subject to the provisions of Section 19.902.

The purpose of this title is to provide for the public health, safety, and general welfare of the citizens of the City through orderly community development including, but not limited to, consideration for concentration of population; economic development; sustainability; limitation of dangerous, offensive, or unwholesome trades or industries; maintenance of adequate light and air; and regulation of traffic.

### 19.103 APPLICABILITY

This title applies to all land, uses, and development within the corporate limits of the City of Milwaukie. It does not apply to temporary events as defined and provided for in Chapter 11.04.

### 19.104 INTERPRETATION

The Planning Director shall have the authority and responsibility for interpreting all terms, provisions, and requirements of this title. Unless specifically defined in Section 19.201, words or phrases used in this title are intended to be interpreted with the meaning they have in common usage. Requests for interpretations may be made as described and provided for in Section 19.903.

### 19.105 SEVERABILITY

The provisions of this title are severable. If any section, sentence, clause, or phrase of this title is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this title.

## 19.106 COMPLIANCE

Development may occur, a lot may be used, and a structure or part of a structure may be constructed, reconstructed, altered, occupied, or used only as this title permits. Where this title imposes greater restrictions than those imposed or required by other rules, regulations, or ordinances, the provisions of this title shall control. Where comparable provisions of this title are in conflict, the provisions that are the most restrictive shall control.

### 19.106.1 Land Use Approvals

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval of all required land use applications prior to establishment or construction. Table 19.901 contains a complete list of the City's land use applications and the locations of the provisions that govern their submittal, review, and approval. Chapter 19.1000 contains the City's land use review procedures.

### 19.106.2 Permit Approvals

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval of all required development permits prior to establishment or construction.

A. The Planning Director shall review applications for development and sign permits for compliance with applicable code provisions.

B. The Planning Director may approve or deny applications for development and sign permits based on consistency with applicable code provisions.

C. All development authorized by approved development and sign permits shall be in substantial conformance with plans approved by the Planning Director.

D. Buildings for which permits have been issued shall not be occupied without prior occupancy approval in accordance with this subsection.

E. Final occupancy approvals shall not be issued until completion of final zoning inspections and issuance of notice of completion by the Planning Director. Approval criteria for issuance of notice of completion includes all of the following:

   1. A written statement from the applicant that all improvements have been constructed in accordance with approved plans, except as modified and approved by appropriate approval authorities.

   2. Completion of zoning inspection by the Planning Director and confirmation that the project is in substantial conformance with approved plans.

   3. Payment of the final zoning inspection fee, as adopted by the City Council.

F. The Planning Director shall complete the final zoning inspection within 5 working days from receipt of the applicant's request for final zoning inspection.

### 19.106.3 Violations

A. A person violating a provision of this title shall, upon conviction, be punished by imprisonment for not more than 30 days, or by a fine of not more than $200, or both. A violation of this title shall be considered a separate offense for each day the violation continues. If the violation was of a provision that was repealed or amended, the violation shall remain a violation to the extent that it does not conform to the provisions of this title.

B. In case a building or land is located, constructed, maintained, repaired, altered, or used in violation of this title, the building or land in violation shall constitute a nuisance, and the City

may, as an alternative to other remedies that are legally available for enforcing this title, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, enjoin temporarily or permanently, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use.

## 19.107 ZONING

### 19.107.1 Zone Classifications

For the purposes of this title, the following base zones and overlay zones are established in the City per Table 19.107.1:

**Table 19.107.1**
**Classification of Zones**

| Zone Description | Abbreviated Description |
|---|---|
| **Base Zones** | |
| Residential | R-10 |
| Residential | R-7 |
| Residential | R-5 |
| Residential | R-3 |
| Residential | R-2.5 |
| Residential | R-2 |
| Residential | R-1 |
| Residential-Business Office | R-1-B |
| Residential-Office-Commercial | R-O-C |
| Downtown Storefront | DS |
| Downtown Commercial | DC |
| Downtown Office | DO |
| Downtown Residential | DR |
| Downtown Open Space | DOS |
| Neighborhood Commercial | C-N |
| Limited Commercial | C-L |
| General Commercial | C-G |
| Community Shopping Commercial | C-CS |
| Manufacturing | M |
| Business Industrial | BI |
| Planned Development | PD |
| **Overlay Zones** | |
| Willamette Greenway | WG |
| Water Quality Resource | WQR |
| Historic Preservation | HP |
| Mixed Use | MU |
| Aircraft Landing Facility | L-F |

### 19.107.2 Zoning Map

The zones described in Subsection 19.107.1 above are displayed on a zoning map entitled "Zoning Map of Milwaukie, Oregon." The Zoning Map shall be dated with the effective date of the ordinance that adopted the Zoning Map and the effective date of the ordinance that most recently amended the map. A certified copy of the map and map amendments, shall be maintained in the offices of the City Planning Department.

### 19.107.3 Zoning Map Amendments

Zoning Map amendments are subject to the provisions of Section 19.902. The procedures for processing a Zoning Map amendment application are located in Chapter 19.1000.

### 19.107.4 Zone Boundary Determinations

The exact location of a zone boundary shall be determined by the Planning Director where there is uncertainty, contradiction, or conflict as to the intended location of any zone boundary due to the scale, lack of detail, or illegibility of the Zoning Map. The determination shall be in accordance with the following guidelines:

A. Street Lines

Where zone boundaries are shown as approximately following the centerline of a right-of-way, such centerlines shall be construed to be the zone boundaries.

B. Lot Lines

Where zone boundaries are shown as approximately following lot lines, such lot lines shall be construed to be the zone boundaries.

C. Water Courses

Where zone boundaries are shown as approximately following the centerline of water courses, such lines shall be construed to be the zone boundaries unless such boundaries are otherwise fixed by dimensions described elsewhere in this title.

If a property owner disagrees with the Planning Director's initial determination, a formal determination request may be made as described and provided for in Section 19.903.

### 19.107.5 Zoning of Lots with Multiple Zones

If a zone boundary for a base zone in Chapter 19.300, as shown on the Zoning Map, divides a lot between 2 or more base zones, the entire lot shall be deemed to be in the base zone in which the greater area of the lot lies, provided that this adjustment involves a distance not to exceed 20 ft from the mapped base zone boundary. If an adjustment exceeds 20 ft, the regulations for the base zones shall apply to the lot as depicted on the Zoning Map.

### 19.107.6 Zoning of Annexed Areas

Land annexed to the City shall be assigned a land use and zoning designation that is consistent with the land use designations established by the Comprehensive Plan and the zones established by this title at the time of annexation. Annexations shall be adopted by ordinance pursuant to Chapter 19.1100.

### 19.107.7 Zoning of Public Right-of-Way

The zones applied to the public rights-of-way within the City boundaries as shown on the Zoning Map do not directly regulate the improvements or structures that are allowed in these rights-of-way. Improvements and structures in public rights-of-way are regulated by other rules, regulations, and ordinances maintained by the City and other road authorities, such as Chapter 19.700, Public Works Standards, and the Transportation System Plan.

# CHAPTER 19.200

# DEFINITIONS AND MEASUREMENTS

**SECTIONS:**
**19.201 Definitions**
**19.202 Measurements**

## 19.201 DEFINITIONS

Refer to individual chapters of this title for chapter-specific definitions.

Refer to Title 18 for definitions related to flood hazard areas.

As used in this title:

"Abandonment" means wireless communication facility is abandoned when it has not been used by a licensed carrier for a period of 6 months.

"Access" means the way or means by which pedestrians, bicycles, and vehicles enter and leave property.

"Accessory parking" means off-street parking that serves the parking demand of a specific use(s). Accessory parking is distinct from a "parking facility," as defined in this chapter.

"Accessory structure or accessory use" means a structure or use incidental and subordinate to the main use of property and located on the same lot as the main use, including accessory parking.

"Accessway" means the place, means, or way by which vehicles have safe, adequate, and usable ingress and egress to a property. The accessway consists of the driveway and driveway approach.

"Accidental destruction" means damage or destruction caused by accident or natural hazard, including, but not limited to, fire, flood, or wind.

"Adult entertainment business" means an establishment which, for any form of consideration, provides or exhibits primarily products or performances characterized by an emphasis on the depiction or description of specified anatomical areas or specified sexual activities. "Adult entertainment business" includes, but is not limited to, adult arcades, adult bookstores, adult clubs, adult bars, adult motels or hotels, and adult theaters.

"Agriculture" means the tilling of the soil, the raising of crops, dairying, or animal husbandry; but not including the keeping or raising of fowl, pigs, or furbearing animals unless the keeping of animals is clearly incidental to the principal use of the property for the raising of crops.

"Airport" or "aircraft landing facility" means any landing area, runway, or other facility designed, used, or intended to be used by aircraft and including all necessary taxiways, hangars, and other necessary buildings and open spaces.

"Alley" means a right-of-way that provides access to the back or side of properties otherwise abutting on a street. Generally, alleys provide secondary vehicle access. Where vehicle access from the street is not allowed, not possible, or not desirable, an alley may provide primary vehicle access.

"Alteration" means any change, addition, or modification to any existing structure or improvement on the site, including changes to site access, when such changes result in any

one of the following: (1) intensification of the use(s) on the site, (2) intensification of the improvements on the site, (3) changes to the exterior appearance of significant historic resources or buildings in the downtown zones, or (4) changes that may have a detrimental effect on surrounding properties or a natural resource area. Alteration may or may not involve an increase in gross floor area. Alteration does not include "routine maintenance and repair." See also "improvements."

"Antenna" means electrical conductor or group of electrical conductors in the form of a metal rod, wire panel, or dish that transmit or receive radio waves or microwaves for wireless communications.

"Antenna support structure" means a structure on which a wireless antenna is or may be placed.

"Alternative support structure" means an existing building, water tower, utility pole in the right-of-way, or an antenna support structure that meets stealth design criteria.

"Existing support structure" means any support structure existing at the time of the application.

"Application" means all forms, materials, and information required for submittal for action authorized under this title.

"Arbor" means an unroofed and unenclosed structure of vines, branches, or latticework typically used to support climbing vines or shrubs.

"Automobile service station" means a retail place of business engaged primarily in the sale of motor fuels, but also supplying goods and services required in the operation and maintenance of automotive vehicles. These may include petroleum products, tires, batteries, automotive accessories and replacement items, washing and lubrication services, the performance of minor automotive maintenance and repair, and the supplying of other incidental customer services and products; but not major automotive repairs, painting, and body and fender work.

"Bankful stage" means the stage or elevation at which water overflows the natural banks of a stream or other waters of the state and begins to inundate upland areas. In the absence of physical evidence, the 2-year recurrent flood elevation may be used to approximate the bankful stage.

"Basement" means a portion of a building, not deemed a story, which has more than half its interior height (but not more than 6 ft) above the adjoining ground-level grade.

"Belfry" means an ornamental or functional roof-mounted structure for enclosing a bell.

"Belvedere" means an architectural feature of a building designed to create views from the building.

"Bicycle facility" means any street or path which in some manner is specifically designated and/or designed for the use of bicycles or for shared use by bicycles and other transportation modes. Bicycle facilities include bicycle parking and on-street and off-street bike lanes, shared lanes, bike boulevards, and bike paths.

"Bike lane" means a portion of a road, street, or shoulder which has been designated for use by bicyclists through the application of a paint stripe.

"Shared lane" means a roadway where bicyclists and autos share the same travel lane. A shared lane is usually wider than a vehicle travel lane but does not delineate between vehicle and bike lanes. It may include bike boulevard treatments.

"Bike boulevard" means a lower-volume street with various treatments to promote safe and convenient bicycle travel. A bike boulevard usually accommodates bicyclists and motorists

in the same travel lanes, often with no specific vehicle or bike lane delineation. It usually assigns higher priority to through bicyclists, with secondary priority assigned to motorists. A bike boulevard also includes treatments to slow vehicle traffic to enhance the bicycling environment.

"Bike path" means a separate trail or path on which motor vehicles are prohibited and which is for the exclusive use of bicycles or for the shared use of bicycles, pedestrians, and other nonmotorized modes of travel.

"Boarding, lodging, or rooming house" means a building or portion thereof without separate housekeeping facilities to be occupied, or which is occupied primarily, by persons paying consideration for sleeping purposes where meals may or may not be provided. Lodging capacity is subject to provisions of the Uniform Building Code.

"Buffer area" means a land area with space, landscaping, and other means sufficient to protect the uses in one zone from being offensive to the uses in another zone.

"Building" means a structure built for the support, shelter, or enclosure of any persons, animals, chattels, or property of any kind excepting uncovered patios or decks not exceeding 18 in. in height above the average grade of the adjoining ground.

"Building height" means the exterior vertical measurement of a building.

"Building line" means a line that coincides with the front side of the main building.

"Build-to line" means an imaginary line on which the front of a building or structure must be located or built, and which is measured as a distance from a public right-of-way.

"Cellar" means a room or group of rooms, usually under a building, which has more than half its interior height below the average grade of the adjoining ground.

"Change in use" means a change in the primary use from one use to another or the addition of other uses, not including accessory uses. A change in use determination shall reference the uses listed in this chapter or the City's base and overlay zones as a guide. A proposal to change or add new uses may require land use approval. See also "use."

"City" means the City of Milwaukie, Oregon.

"Colocation" means the placement of an antenna on an existing wireless communication facility, building, water tower, utility pole, where the antennas and all supports are located on an existing structure.

"Commercial recreation" means an establishment where people pay for recreation including such types as health center, places with court games, dance halls, places with machine games, and so forth.

"Commercial vehicle" means a vehicle designed or used primarily for commercial purposes, and which is either 9 ft tall or taller as measured from ground height, or has an enclosed storage area greater than 6 ft in height and 9 ft in length. Recreational vehicles that are not used for profit are not considered commercial vehicles.

"Congregate housing facility" means a multidwelling-unit, permanent housing center with individual or common housekeeping facilities and services provided for residents who require or desire a more supportive living environment than typically available to residents in traditional apartment or single-family residential housing. These facilities may provide regular on-premises supervision by registered medical staff or care providers. Occupants of these facilities may include the elderly, disabled, handicapped, or other persons as defined in the Federal Fair Housing Amendments Act of 1988. Congregate housing facilities are permitted outright in all

residential zones that permit multifamily apartments, and they require conditional use approval in those residential zones that allow multifamily uses conditionally. In each case, density standards of the zone shall determine number of units allowed.

"Contract purchaser" means the party identified as the buyer in a land contract that is in force and is recorded with Clackamas County.

"Constructed wetlands" means those wetlands developed as a water quality or quantity facility, subject to change and maintenance as such. These areas must be clearly defined and/or separated from naturally occurring or created wetlands.

"Corridor design plan" means a plan which establishes special development standards along a transportation corridor. A corridor design plan is adopted as part of the Comprehensive Plan and is implemented through overlay zones.

"Cupola" means an ornamental or functional structure placed on a roof or dome mimicking or functioning as a lantern, belfry, or belvedere.

"Curb return" means the curved portion of a street curb at street intersections or the curved portion of a curb in the wings of a driveway approach.

"Day-care center" means any facility, institution, establishment, or place not a part of a school as defined in this chapter and not meeting the definition of family day care, that provides day care to children not of common parentage, including day nurseries, nursery schools, preschools, day-care facilities, or similar units operating under any name for the purpose of being given board, care, or training apart from their parents or guardians for compensation or reward.

"Debris" means discarded man-made objects that would not occur in an undeveloped stream corridor or wetland. Debris includes, but is not limited to, tires, vehicles, litter, scrap metal, construction waste, lumber, plastic, or styrofoam. Debris does not include objects necessary to a use allowed by this ordinance or ornamental and recreational structures. Debris does not include existing natural plant materials or natural plant materials which are left after flooding, downed or standing dead trees, or trees which have fallen into protected water features.

"Department of Environmental Quality (DEQ) Water Quality Standards" means the numerical criteria or narrative condition needed in order to protect an identified beneficial use.

"Developer's agreement" means a notarized document signed by the property owner, and recorded against the property in question, wherein the property owner agrees to construct or provide public facility improvements specifically identified in the document, or in cases where local improvement district or project formation is necessary to share in the cost of necessary public facility improvements, to not remonstrate against the City for such improvements, and to pay the assessment or share for such improvements at the time they are made. Actual property owner share and share formula shall be determined at the time of local improvement district or project formation. This may consist of such determination methods as street frontage percentage, lot square footage, and/or standard per lot assessment. A developer's agreement is not a Development Agreement as defined by ORS 95.504.

"Development" means all improvements on a site, including, but not limited to: buildings, accessory structures, parking and loading areas, paved or graveled areas, improved open areas (such as plazas or walkways), above-ground utilities, landscaping, and areas devoted to exterior display, storage, or activities. Development also includes actions that result in physical change to a site, including, but not limited to: mining, dredging, filling, or grading in amounts greater than 10 cu yd. Some types of development may require issuance of a development permit and/or land use approval prior to construction or placement. Development does not include the following: (1) stream enhancement or restoration projects approved by cities and counties; (2)

farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of Title 3; (3) construction on lots in subdivisions meeting the criteria of ORS 92.040(2); or (4) natural geologic forms or unimproved land.

"Development permit" means any permit, such as a building permit, issued by the City's Building Department for action authorized under this title. Land use approval by the City's Planning Department or Planning Commission is required prior to the issuance of a development permit for some actions.

"Discontinued or abandoned use" means a use that is no longer in operation. A use shall be considered discontinued or abandoned upon the first day that any of the following events has occurred: (1) the use physically vacates the site, (2) the use ceases to be actively involved in the activity, (3) any lease or contract under which the use has occupied the land is terminated, or (4) a request for final reading of water and power meters is made to the applicable utility districts.

"Disturb" means to make changes to the existing physical status of the land that are made in connection with development. The following changes are excluded from the definition: enhancement or restoration of the Water Quality Resource Area and planting native cover identified in the Milwaukie Native Plant List.

"Dormer" means a projecting structure built out from a sloping roof usually containing a window.

"Dormitory" means a room which is rented for sleeping purposes for more than 4 persons.

"Downtown zones" means the 5 zones that implement the Milwaukie Downtown and Riverfront Land Use Framework Plan—Downtown Storefront (DS), Downtown Commercial (DC), Downtown Office (DO), Downtown Residential (DR), and Downtown Open Space (DOS).

"Drinking establishment" means a tavern, bar, cocktail lounge, or other similar business establishment with the primary function of preparing and serving alcoholic beverages to the public for consumption on the premises. This establishment may or may not be in conjunction with an eating establishment.

"Drive-through facility" means a business activity involving buying or selling of goods, or the provision of services, where one of the parties conducts the activity from within a motor vehicle. Facilities usually associated with a drive-through are queuing lanes, service windows, service islands, and service bays for vehicular use.

"Driveway" means the portion of the accessway located on private property or public lands outside of the public right-of-way.

"Driveway approach" means the portion of the accessway located within the public right-of-way. The driveway approach consists of the driveway apron, wings, and sidewalk section. See Chapter 12.16 Access Management for definitions of these terms.

"Dwelling" means a structure containing 1 or more dwelling units used, intended, or designed to be built, used, rented, let, or hired out to be occupied, or which are occupied for living purposes. Dwelling types are defined in this chapter.

"Dwelling unit" means 1 or more rooms designed for occupancy by 1 family, but excluding a recreational vehicle.

"Single-family attached" means 2 dwelling units, each occupied as a housekeeping unit, sharing common structural walls.

"Single-family detached" means a house or a manufactured home normally occupied by 1 family with no structural connection to adjacent units. The dwelling and lot are usually under single ownership.

"Multifamily apartment" means a single structure containing 3 or more dwelling units, usually for rent, and sharing common structural walls.

"Multifamily condominium" means a single structure containing 3 or more individually owned dwelling units, with all other common elements jointly owned on a specified basis.

"Interior single-family attached, interior multifamily condominium" means that dwelling unit or units that are interior to the whole residential structure and does not include the dwelling units that are on the ends of the structure facing lot lines.

"Accessory dwelling" means a dwelling unit that is clearly incidental and subordinate to a detached single-family dwelling, located in a single-family structure designed for occupancy by a housekeeping unit, and not containing more than 1 cooking facility. For the purpose of this definition "cooking facility" means an oven, stove, range, or other device used or intended for the preparation or heating of food.

"Type 1 accessory dwelling" means an accessory dwelling unit not less than 225 sq ft net floor area and not more than 600 sq ft net floor area and meeting the requirements of Subsection 19.910.1. For the purpose of this chapter, net floor area is measured from the inside face of walls enclosing the unit including all storage space, closets, halls, stairwells, and rooms.

"Type 2 accessory dwelling" means an accessory dwelling unit other than a Type 1 accessory dwelling unit, as permitted by Subsection 19.910.2.

"Eating establishment" means a restaurant or other similar business establishment with the primary function of serving food, prepared to order, to the public, and may serve alcoholic beverages at the dining table. This establishment may or may not have an attached drinking establishment.

"Emergency" means any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

"Enhancement" means the process of improving upon the natural functions and/or values of an area or feature which has been degraded by human activity. Enhancement activities may or may not return the site to a predisturbance condition but create/recreate processes and features that occur naturally.

"Equipment cabinets" means an enclosed box or structure used to house equipment for the operation, maintenance, or repair of a wireless communication antenna.

"FAA approval" means demonstration of compliance with all applicable rules and regulations under the FAA's jurisdiction.

"Façade" means all the wall planes of a structure as seen from one side or view. For example, the front façade of a building would include all of the wall area that would be shown on the front elevation of the building plans.

"Family" means any person or group of persons living within a single housekeeping unit as defined in this chapter.

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

"Fence" means any artificially constructed barrier of any material or combination of materials erected for purpose of enclosing, protecting, or screening areas of land and uses thereon.

> "Sight-obscuring fence" means a fence consisting of wood, metal, masonry, or similar materials, or an evergreen hedge or other evergreen planting, arranged in such a way as to obscure vision at least 80%.

"Flag lot" means a lot that has a narrow frontage on a public street with access provided via a narrow accessway or "pole" to the main part of the lot used for building, which is located behind another lot that has street frontage. There are 2 distinct parts to the flag lot; the development area or "flag" which comprises the actual building site, and the access strip or "pole" which provides access from the street to the flag.

"Flood management areas" means all lands contained within the 100-year floodplain, flood area, and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.

"Floodway" means the channel of a stream and adjacent land areas which are required to carry and discharge flood waters or flood flows of a 100-year flood, as defined by the Corps of Engineers.

"Floodway fringe" means that land area which is outside of the stream floodway but is subject to periodic inundation by a 100-year flood, as defined by the Corps of Engineers.

"Floor area" means the sum of the area of each floor level, including cellars, basements, mezzanines, accessory structures, penthouses, corridors, lobbies, stores, and offices that are within the principal outside faces of exterior walls, or from the centerline of walls separating 2 buildings, not including architectural setbacks or projections. Included are all areas that have floor surfaces with clear standing head room of at least 6 ft 6 in, regardless of their use or finished state. Floor area does not include the following:

- Uncovered steps or fire escapes.
- Private garages, carports, or unenclosed porches.
- Accessory water towers or cooling towers.
- Accessory off-street parking or loading spaces.

"Floor area ratio" means the amount of building floor area in relation to the amount of site area, expressed in square feet. For example, a floor area ratio of 2 to 1 means 2 sq ft of floor area for every 1 sq ft of site area. A developer may exclude public utility easements from the site area when calculating the floor area ratio for a site.

"Foster home" means any home maintained by a person licensed by the State to provide care, food, and lodging in such home for not more than 10 children, including his or her own children, under the age of 18 years and unaccompanied by a parent or guardian.

"Frontage" means the portion of a property that abuts a public or private street.

"Frontage improvements" means transportation facility improvements occurring along a property's frontage. See also "improvements."

"Garage" means a covered structure designed to provide shelter for vehicles and which is accessory to a residential use. Carports are considered garages. Floor area adjacent to the

space designed to provide shelter for vehicles, if not entirely separated from the garage area by floor-to-ceiling walls, is considered part of the garage. A garage may be attached to, or detached from, another structure.

"Carport" means a stationary structure consisting of a roof, its supports, and not more than 1 wall (or storage cabinets substituting for a wall) used to shelter motor vehicles, recreational vehicles, or boats. A structure is only considered to be a carport when it is being used to meet minimum off-street parking requirements.

Grade:

"Ground-level grade" means the average of the finished ground level at the center of all walls of a building. Where the walls are parallel to and within 5 ft of a public sidewalk, the ground level shall be measured at the average sidewalk elevation.

"Green street" means a street that incorporates a stormwater management system into its design, allowing most stormwater runoff to be absorbed locally. Green street treatments capture and treat stormwater runoff locally, thereby protecting streams, groundwater, and wildlife habitat.

"Greenway areas" means lands that lie along the Willamette River and major courses flowing into the Willamette River. Shown on the Zoning Map as the Willamette Greenway Overlay.

"Ground floor" means any floor with direct access to grade. A building or facility always has at least 1 ground floor, and may have more than 1 ground floor where a split-level entry has been provided or where a building is built into a hillside.

"Guyed tower" means a tower which is supported by the use of cables (guy wires).

"Half street" means transportation facility improvements equal to half of a street design cross section plus enough additional roadway pavement for at least 2 travel lanes.

"Hazardous materials" means materials defined by the Oregon Department of Environmental Quality as hazardous.

"High-impact commercial businesses" means any such use that generates substantial traffic, noise, light, irregular hours, or other negative impact on the community. Examples include, but are not limited to: drinking establishments, commercial recreation, adult entertainment businesses, theaters, hotels, and motels.

"High-impact nonconforming use" means any use that is a nonconforming high-impact commercial business in any zone or any use that is a nonconforming industrial use in any zone. Nonconforming use, as defined below, means a lawful existing use that does not conform to the City's current land use ordinances, either because it was established prior to the enactment of City ordinances governing the use, or because the use conformed at the time it was established but applicable City ordinances have since changed.

"Home occupation" means an occupation normally carried on at a dwelling as an accessory use to the dwelling, with the activity conducted in such a manner as to give no appearance of a business, and with no infringement upon the right of neighboring residents to enjoy the peaceful occupancy of their homes.

"Horticulture" means the cultivation of plants, garden crops, trees, or nursery stock.

"Hotel" means a building or portion thereof designed or used for occupancy of transient individuals who are lodged with or without meals, and in which no provision is made for cooking in any individual room or suite.

"Housekeeping unit" means a living arrangement within a dwelling unit in which a single common kitchen facility, laundry facility, living and dining rooms, and other general living areas of the dwelling, and the duties, rights, and obligations associated with the performance of domestic tasks and management of household affairs, are shared by the residents by virtue of legal relationship or mutual agreement.

Improvements:

"Off-site improvements" means all public facility improvements occurring off the site and not along the site's frontage.

"On-site improvements" means all development on the site. The term on-site improvements also refers to public facility improvements occurring on the site or along its frontage in a right-of-way or easement. See also "frontage improvements."

Institution:

"Institutional campus" means a medical or educational institution and associated uses. Medical institutional campuses include medical centers and hospitals. Educational institutional campuses include universities, colleges, high schools, and other similar institutions offering course of study leading to a high school diploma or degree certified by a recognized accreditation body. Associated uses on institutional campuses may include some commercial and light industrial uses, major event entertainment, residential, and other uses.

"Higher educational institution" means a college or university, accredited by the State.

"Interior landscaping" means area(s) internal to a lot that is(are) devoted to buffer area(s) with plantings.

"Invasive nonnative or noxious vegetation" means plant species that have been introduced and, due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread into native plant communities.

"Junkyard" means any establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste; junked, dismantled, wrecked, scrapped, or ruined motor vehicles; or motor vehicle parts, iron, steel, or other scrap or old ferrous or nonferrous material, metal or nonmetal materials; and the term includes automobile graveyards, garbage dumps, and scrap metal processing facilities.

"Kennel" means any lot or premises on which 4 or more dogs, more than 4 months of age, are kept.

"Kitchen facility" means an area in which something is built, installed, or established to prepare food for eating by a heating process.

"Landscape strip" means an area for street trees and other plantings within the public right-of-way that is usually located between the curb and the sidewalk.

"Landscaping" means vegetation and materials, including, but not limited to, shrubs, grass, trees, planting beds, and bark dust.

"Lantern" means a superstructure crowning a roof or dome having open or windowed walls to let in light and air.

"Lattice tower" means a tower characterized by an open framework of lateral cross members, which stabilize the tower without the use of guy wires.

"Lease area" means the area of a parcel on which wireless communication facilities, antennas, and equipment buildings are located.

"Limited use" means a use that is permitted subject to specific limitations as described in the Zoning Ordinance.

"Livestock" means domestic animals, such as cattle, horses, sheep, hogs, or goats, raised for home use or for profit.

"Loading space" means an off-street space or berth on the same lot, or parcel, with a building or use, or contiguous to a group of buildings or uses, for the temporary parking of a vehicle while loading or unloading persons, merchandise, or materials, and which space or berth abuts upon a street, alley, or other appropriate means of access and egress.

"Lot" means a plot, parcel, or area of land owned by, or under the lawful control and in the lawful possession of, one distinct ownership.

"Corner lot" means a lot abutting on 2 or more streets, other than an alley, at their intersection.

"Interior lot" means a lot other than a corner lot.

"Through lot" means an interior lot having frontage on 2 streets.

"Lot coverage" means the footprint of a building(s) on a lot, measured from the outermost projection of the building(s), expressed as a percentage of the total lot area.

"Lot depth" means the average horizontal distance between the front lot line and the rear lot line.

"Lot line" means the property line bounding a lot.

"Front lot line" means, in the case of an interior lot, the lot line separating the lot from the street other than an alley; in the case of a corner lot, a line separating the lot from the street on which the contemplated development will face; and, in the case of a through lot, a line separating the lot from the street on which the contemplated development will face.

"Rear lot line" means a lot line which is opposite and most distant from the front lot line; and in the case of an irregular, triangular, or other-shaped lot, a line 10 ft in length within the lot parallel to and at the maximum distance from the front lot line.

"Side lot line" means any lot line not a front or rear lot line.

"Lot width" means the horizontal distance between side lot lines measured at the building line.

"Low-impact nonconforming use" means any use that is a nonconforming residential use in any zone.

"Maneuvering area" means an area on a site over which vehicles travel between a parking space and the street.

"Manufactured dwelling" means a residential trailer, mobile home, or manufactured home meeting ORS 446.003(25) and designed to be used as a year-round residential dwelling. The manufactured dwelling is a structure constructed for movement on the public highways, that has sleeping, cooking, and plumbing facilities, and that is being used for residential purposes.

"Manufactured dwelling park" means a lot, tract, or parcel of land under one ownership, the primary purpose of which is to rent space for placement of a manufactured dwelling. A manufactured dwelling park shall contain a minimum of 2 acres and a minimum of 4 manufactured dwellings.

"Manufactured home" means a single-family residential structure as defined in ORS 446.003(25)(a)(C) which includes a Department of Housing and Urban Development (HUD) label certifying that the structure is constructed in accordance with the Manufactured Housing Construction and Safety Standards of 1974 (42 USC Sections 5401 et seq.) as amended on August 22, 1981.

"Minimum vegetation" means the area of a lot that supports vegetation, including planting areas under roof eaves, expressed as a percentage of the total lot area.

"Mobile home" means a manufactured dwelling that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

"Monopole" means a single upright pole engineered to be self-supporting without lateral cross supports or guy wires and used as an antenna support structure.

"Motel or tourist court" means 1 or more buildings designed or used as temporary living quarters for transients.

"Native vegetation" means any vegetation native to the Portland metropolitan area or listed on the Milwaukie Native Plant List.

"Net acre" means an area measuring 43,560 sq ft excluding the following: rights-of-way; floodplains; protected water features; natural resource areas protected under Statewide Planning Goal 5; slopes in excess of 25%; and publicly owned land designated for park, open space, and resource protection.

"New construction" means development on a site that was previously undeveloped or from which previously existing structures have been demolished. New construction can also occur on sites with existing structures. New construction includes the following: (1) new structures, (2) new additions to existing structures, and (3) reconstruction of fully or partially demolished structures.

"Nonconforming development" means a lawful structure or site improvement, such as an off-street parking facility, landscaping, or accessway, that does not conform to the City's current development ordinances either because it was established prior to the enactment of City ordinances governing the structure or improvement or because the structure or improvement conformed at the time it was established but applicable City ordinances have since changed.

"Nonconforming use" means a lawful existing use that does not conform to the City's current land use ordinances, either because it was established prior to the enactment of City ordinances governing the use, or because the use conformed at the time it was established but applicable City ordinances have since changed.

Office:

> "Professional and administrative office" means professional, executive, management, or administrative offices of firms or organizations. Typical uses include offices for professionals such as physicians, dentists, lawyers, architects, engineers, artists, musicians, designers, teachers, accountants, or others who through training are qualified to perform services of a professional nature, and where no storage or sale of merchandise exists.

"Off-street parking" means space located outside of any street right-of-way that is designed to accommodate the parking of motorized and nonmotorized vehicles.

"Open space" means any parcel of land or portion of a parcel without a structure, except as used and defined in the Planned Development Zone.

"Ordinary mean high water line" means the elevation on the bank or shore to which water ordinarily rises in season.

"Ordinary mean low water line" means the line on the bank or shore to which water ordinarily recedes in season; synonymous with mean low water.

"Owner" includes an authorized agent of the owner.

"Parking facility" means any off-street parking area that is not accessory to a specific use. Examples include short- and long-term fee parking facilities, commercial district shared parking lots, and commercial shuttle parking. Accessory parking areas that occasionally charge the public to park for nearby events are not considered parking facilities.

"Parking space" means an area meeting the dimensions of Chapter 19.600 that is available for the parking of an automobile.

"Perennial streams" means all primary and secondary perennial waterways mapped by the U.S. Geological Survey.

"Pergola" means an unenclosed and unroofed structure of parallel columns supporting an open roof of beams and crossing rafters or trelliswork.

"Perimeter landscaping" means an area around the edge of a lot that is devoted to a buffer area with plantings.

"Person" means any natural person, firm, partnership, association, social or fraternal organization, corporation, estate, trust, receiver, syndicate, branch of government, or any other group or combination acting as a unit.

"Personal/business services" means the provision of services to individuals or businesses. Typical uses include laundromats/dry cleaners, tanning salons, barbers, beauty salons, shoe repair, copy centers, secretarial services, and blueprint services.

"Physical characteristics" means the physical, natural, and/or man-made features characteristic to a property or properties, including, but not limited to, trees and other vegetation, rocks and outcrops, topography and ground features such as knolls and depressions, water bodies and wetlands, soil characteristics, excavations and fill, and embankments.

"Planning Director's interpretation" means a ruling of the Planning Director regarding the applicability, scope, or effect of any provision of Titles 14, 17, and this title.

"Plaza" means an area generally open to the public on a controlled basis and used for passive recreational activities and relaxation. Plazas are paved areas, typically provided with amenities such as seating, drinking and ornamental fountains, art, trees, and landscaping, for use by pedestrians.

"Pleasure craft" means a motorized or nonmotorized boat, canoe, kayak, or other similar vessel that is used for private aquatic recreational uses.

"Postconstruction erosion control" means reestablishing groundcover or landscaping prior to the removal of temporary erosion control measures.

"Poultry" means domestic fowl, such as chickens, turkeys, ducks, or geese, raised for flesh or eggs.

"Preapplication conference" means a meeting between Planning Department staff and an applicant or property owner. It provides for an exchange of information regarding applicable requirements of City codes, makes available technical assistance which will aid in the

development of an application, and attempts to identify procedures, policies, and regulations that may pose opportunities or constraints for a proposal.

"Prefabricated construction" (modular units) means a structural unit, conforming to the Uniform Building Code, that has been wholly or in part prefabricated at an off-site location and brought by trailer to the site for assembly.

"Primary entrance" means the entrance to a building that most pedestrians are expected to use. Generally, each building has 1 primary entrance. Primary entrances are the widest entrances of those provided for use by pedestrians. In multitenant buildings, primary entrances open directly into the building's lobby or principal interior ground-level circulation space. When a multitenant building does not have a lobby or common interior circulation space, each tenant's outside entrance is a primary entrance. In single-tenant buildings, primary entrances open directly into lobby, reception, or sales areas.

"Protected water feature" means the following:

"Primary protected water feature" means and includes any of the following:

- Title 3 wetlands.
- Rivers, streams, and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow).
- Streams carrying year-round flow.
- Springs which feed streams and wetlands and have year-round flow.
- Natural lakes.

"Secondary protected water features" means and includes intermittent streams and seeps downstream of the point at which 50 acres are drained and upstream of the point at which 100 acres are drained to that water feature.

"Public area requirements" means specific standards for streets, sidewalks, and public spaces adopted to implement the Downtown and Riverfront Land Use Framework Plan.

"Public facilities" means transportation and public utility improvements as described below.

"Transportation facilities" means transportation-related improvements in a right-of-way or easement, including, but not limited to, travel lanes, bicycle lanes, sidewalks, and transit facilities.

"Public utilities" means public utility-related improvements in a right-of-way, easement, or tract, including water, sanitary sewer, and stormwater infrastructure. See also "utility facilities."

"Public park" means a park, playground, swimming pool, reservoir, or athletic field within the City which is under the control, operation, or management of the Milwaukie Community Services Department.

"Railroad facilities" means railroad switching yards, terminal structure, railroad tracks, or any other facilities connected with railroads which generate substantial noise or nuisance.

"Recreational vehicle" means a vehicular-like, portable structure which can be towed, hauled, or driven and is primarily designed for temporary living accommodations for recreational camping and travel use and includes, but is not limited to, travel trailers, motor homes, camping trailers, campers, and recreational vans.

"Religious institution" means a structure used by a religious organization having a tax-exempt status.

"Residential home" means a dwelling unit operated as a single housekeeping unit for the purpose of providing a residence which includes food, shelter, personal services, and care, on a permanent basis, for the elderly, disabled, handicapped, or others requiring such a residence as defined by the Federal Fair Housing Amendments Acts of 1988.

"Residential trailer" means a manufactured dwelling that was constructed prior to January 1, 1962.

"Restoration" means the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

"Retail trade" means the sale, lease, or rental of new or used products to the general public. Typical uses include, but are not limited to, grocery stores, specialty stores, drugstores, bookstores, jewelry stores, and video stores.

"Right-of-way" means an area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, pedestrian connections, alleys, and all streets. A right-of-way may be dedicated or deeded to the public for public use and under the control of a public agency, or it may be privately owned. A right-of-way that is not dedicated or deeded to the public is usually in a tract or easement. See also "street."

"Riparian" means those areas associated with streams, lakes, and wetlands where vegetation communities are predominately influenced by their association with water.

"Roadway" means the portion of the street consisting of the paved area between curbs or shoulders. The roadway includes vehicle travel lanes, parking strips, and bike lanes.

"Routine repair and maintenance" means activities directed at preserving an existing allowed use or facility including replacement of materials, but excluding any increases in the existing dimensions of the structure. See also "alteration."

School:

> "Commercial school" means a place where instruction is given to pupils in arts, crafts, trades, or other occupational skills, and operated as a commercial enterprise as distinguished from schools endowed or supported by taxation.
>
> "Primary, elementary, junior high, or high school" means and includes public, private, or parochial; but not nursery school, kindergarten, or day nursery, except when operated in conjunction with a school.

"Second-floor housing" means a residential use that is located on or above the second floor of a building, with the ground floor of the building devoted to nonresidential use (such as, but not limited to, retail or office use).

"Senior and retirement housing" means a multiunit dwelling where persons who are of retirement age reside. Activity levels, including traffic generation and parking of cars, are generally lower than for other types of housing. Common facilities for eating and activities may be provided; nursing care, medical supplies, and personal services may be provided on a limited basis. One person may own the entire complex, or each dwelling unit may be owned separately as in a condominium. The dwelling units shall not have more than 1 bedroom per unit and shall not have more than 800 sq ft per dwelling unit.

"Shared parking" means the same off-street parking area is identified by one or more uses for the parking needs of employees, customers, and/or residents.

"Sidewalk" means a paved walkway within a public right-of-way that is designed for pedestrian use. Sidewalks are generally adjacent to, but separated from, bicycle and vehicle travel lanes by horizontal and/or vertical street elements. Separation generally involves a curb, landscape strip, or both a curb and landscape strip.

"Specified anatomical areas" means and includes any of the following:

- Less than completely and opaquely covered genitals, pubic region, buttock, anus, or female breast below a point immediately above the top of the areola.
- Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified sexual activities" means and includes any of the following:

- The fondling or other erotic touching of human genitals, pubic region, buttock, anus, or female breast.
- Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy.
- Masturbation, actual or simulated.
- Excretory functions as part of or in connection with any of the activities set forth in the first three bullet points of this definition.

"Stealth Design" means a wireless communication facility that is designed or located in a such a way that the facility is not readily recognizable as wireless communication equipment and is compatible with surrounding uses.

"Steep slopes" means slopes that are equal to or greater than 25%.

"Stormwater facility" or "stormwater pretreatment facility" means any structure or drainageway that is designed, constructed, and maintained to collect, filter, and retain or detain surface water runoff during and after a storm event for the purpose of water quality improvement. It may also include, but is not limited to, existing features such as wetlands, swales, and ponds that are maintained as stormwater facilities.

"Story" means portion of a building between any floor and the next floor above. If the floor level directly above a basement or unused under-floor space is more than 6 ft above grade for more than 50% of the total perimeter or is more than 10 ft above grade at any point, such basement or unused under-floor space shall be considered as a story.

> "Half-story" means a story under a gable, gambrel, or hip roof, the wall plates of which on at least 2 opposite exterior walls are not more than 2 ft above the floor of such story. If the floor level directly above a basement or unused under-floor space is less than 6 ft above grade, for more than 50% of the total perimeter and is not more than 10 ft above grade at any point, such basement or unused under-floor space shall be considered as a half-story.

"Stream" means a body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet, or river, that flows at least part of the year, including perennial and intermittent streams.

"Street" means the entire width between right-of-way lines for vehicular, bicycle, and pedestrian traffic and includes the terms "road," "highway," "lane," "place," "avenue," "alley," and other similar designations.

"Street classification" or "functional street classification" means the classification given to a street that encompasses both its design characteristics and the level and type of service it is intended to provide. These classifications guide design standards, levels of access, traffic control, law enforcement, and the provision for federal, State, and regional transportation funding. The City's functional street classification system includes regional routes, arterials, collectors, neighborhood streets, and local streets. These classifications are described in more detail in the City's Transportation System Plan.

"Street network" means individual streets that are physically connected to one another and that collectively serve travel needs on a local, citywide, and regional level.

"Closed-end street system" means any configuration of streets, including cul-de-sacs, that connect to a single point of access on the street network. A closed-end street system does not include a street system with more than 1 existing or future connection to the street network. Future connections require dedication of right-of-way or other permanent reservations for future connectivity.

"Through street" means a street that connects to other streets on both ends.

"Street stub" means a temporary street ending that is intended to be extended through adjacent property in the future. Street stubs are generally required when it is anticipated that adjacent property will need to extend the street to accommodate future development.

"Street tree" means a tree located in the right-of-way in a center median or island or in a landscape strip or tree well between the street and the sidewalk.

"Structure" means something constructed or built and having a fixed base or fixed connection to the ground or another structure. (Streets and utilities are excluded from this definition.)

"Structured parking" means a structure in which vehicle parking is accommodated on multiple stories; a vehicle parking area that is underneath all or part of any story of a structure; or a vehicle parking area that is not underneath a structure, is entirely covered, and has a parking surface at least 8 ft below grade. Structured parking does not include garages or carports.

"Temporary or transitional facility" means a facility which may provide temporary or transitional services to families or individuals, including lodging where the average stay is 60 days or less. Such facilities shall be classified as community service uses and may include shelters, community counseling centers, rehabilitation centers, and detention and detoxification facilities.

"Title 3 Wetlands" means wetlands as shown on the Water Quality Resource Area map and other wetlands added to City- or County-adopted Water Quality Resource Area maps consistent with the criteria in Metro Urban Growth Management Functional Plan Title 3, Section 3.

"Tower" means a structure with the sole purpose of serving as an antenna support structure. "Tower" includes guyed towers, lattice towers, and monopoles, but does not include any alternative antenna support structure.

"Townhouse" means an attached residential structure which retains private ownership of a portion of the land around it, generally in the form of a small front and/or rear yard. Townhouses on interior lots may have a zero side yard setback. A townhouse can be located in the center of a large project or it can be located adjacent to an existing street. The front door is not required to open onto a street if it is on the interior of a development. If a townhouse property is adjacent to a street, it is required to have its front door facing the street.

"Traffic management" means the many and varied traffic management measures used to reduce the impacts of vehicular traffic volumes and speeds on residential neighborhoods and improve safety for pedestrians and cyclists.

"Transit stop" means a site designated by TriMet as the location at which a TriMet bus or light rail train will accept or discharge passengers.

"Transit street" means a street with existing transit service operating at 20-minute-or-less peak hour frequency.

"Transition area" means an area where new multifamily projects in R-3, R-2, and R-1 Zones that are adjacent to areas designated for lower densities have required transition measures.

"Trellis" means an unenclosed and unroofed vertical frame supporting open latticework used as a screen or support for growing vines or other plants.

"Turnaround" means a vehicle maneuvering area at the end of a street, such as a cul-de-sac or hammerhead turnaround, that allows vehicles to turn around. Turnarounds can be either permanent or temporary.

"Use" means the purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained. See also "change in use."

"Utility facilities" means buildings, structures, or any constructed portion of a system which provides for the production, transmission, conveyance, delivery, or furnishing of services, including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone, and cable television. Utility facilities do not include stormwater facilities.

"Vegetated corridor" means the area of setback between the top of the bank of a protected water feature and the delineated edge of the Water Quality Resource Area as defined in Tables 19.402.9.A and E.

"Vegetation" means plantings or natural growth including trees, grass, shrubs, and other similar vegetated groundcover.

"Vehicle" means a device in, upon, or by which any person or property is or may be transported or drawn upon a public street, except devices moved by human power or used exclusively upon stationary rails or tracks.

"Walkway" means a pedestrian-only corridor that is paved with a hard surface material and connects pedestrians from parking areas to uses, between uses, and to sidewalks on adjacent public streets. Walkways are separated from parking areas and internal driveways to promote pedestrian safety.

"Water quality and floodplain management area" means the area that identifies where the Water Quality Resource Area and floodplain management area overlay zone is applied.

"Water Quality Resource Areas" means vegetated corridors and the adjacent water feature as established in Section 19.402.

"Mitigation" means the reduction of adverse effects of a proposed project by considering, in this order: (1) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (2) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (3) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and/or (4) compensating for the impact by replacing or providing comparable substitute Water Quality Resource Areas.

"Significant negative impact" means an impact that affects the natural environment, considered individually or cumulatively with other impacts on the Water Quality Resource Area, to the point where existing water quality functions and values are degraded.

"Watershed" means a geographic unit defined by the flows of rainwater or snowmelt.

"Wetlands" means those areas inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances that do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Wireless communication facility (WCF)" means a facility that is designed and used for the purpose of transmitting, receiving, and relaying radio waves of various wireless communication devices. A wireless communication facility normally includes one or more of the following:

- Antennas
- An antenna support structure
- An equipment cabinet

"Yard" means an open space on a lot which is unobstructed from the ground upward except as otherwise provided in this title.

"Front yard" means a yard between side lot lines, measured horizontally and at right angles to the front lot line from the front lot line to the nearest point of the building.

"Rear yard" means a yard between side lot lines or between a street side yard and opposite side lot line, measured horizontally and at right angles to the rear lot line from the rear lot line to the nearest point of the building.

"Side yard" means a yard between the front and rear yards, measured horizontally and at right angles from the side lot line to the nearest point of the building.

"Street side yard" means a yard adjacent to a street between the front and rear yards, measured horizontally and at right angles from the side lot line to the nearest point of the building.

### 19.202 MEASUREMENTS

#### 19.202.1 Horizontal Measurements

All horizontal distances for yard widths and lot and building dimensions shall be measured along a horizontal plane from the appropriate property line, edge of building, structure, storage area, parking area, or other object. These distances shall not be measured by following the topography of the land.

#### 19.202.2 Vertical Measurements

A. Interior Height

Floor-to-ceiling height shall be measured from the top of the floor finish to the bottom of the ceiling joists or, where there is no ceiling, to the bottom of the roof rafters.

B. Exterior Height

Except where otherwise specified in Title 19, building height shall be measured from the adjoining street centerline grade, as established by the City, to the highest point of the roof surface of a flat roof, to the deck line of a mansard roof, or to the mean height between the eaves and the ridge for a gable, hip, or gambrel roof. Where the building is set back from the street, building height may be measured from the average elevation of the finished grade at the front of the building.

# CHAPTER 19.300

# BASE ZONES

SECTIONS:

19.301 Residential Zone R-10
19.302 Residential Zone R-7
19.303 Residential Zone R-5
19.304 Residential Zone R-3
19.305 Residential Zone R-2.5
19.306 Residential Zone R-2
19.307 Residential Zone R-1
19.308 Residential-Business Office Zone R-1-B
19.309 Residential-Office-Commercial Zone R-O-C
19.310 Downtown Zones
19.311 Neighborhood Commercial Zone C-N
19.312 Limited Commercial Zone C-L
19.313 General Commercial Zone C-G
19.314 Community Shopping Commercial Zone C-CS
19.315 Manufacturing Zone M
19.316 Business Industrial Zone BI
19.317 Planned Development Zone PD

## 19.301 RESIDENTIAL ZONE R-10

In an R-10 Zone the following regulations shall apply:

### 19.301.1 Uses Permitted Outright

In an R-10 Zone the following uses and their accessory uses are permitted outright:

A. Single-family detached dwelling;

B. Residential home;

C. Agricultural or horticultural use, provided that:

1. A retail or wholesale business sales office is not maintained on the premises, and
2. Poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock;

D. Any other use similar to the above and not listed elsewhere.

### 19.301.2 Conditional Uses Permitted

In an R-10 Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

A. Temporary real estate office in a subdivision;

B. Single-family attached dwelling;

C. Senior and retirement housing;

D. Type 2 accessory dwelling unit;

E. Any other use similar to the above and not listed elsewhere.

### 19.301.3 Standards

In an R-10 Zone the following standards shall apply:

A. Lot size. Lot area shall be at least 10,000 sq ft, and the lot area shall be not less than an average of 7,000 sq ft for dwelling of a single-family attached dwelling. Lot width shall be at least 30 ft for an interior single-family attached unit. Lot depth shall be at least 100 ft. Lot width shall be at least 70 ft.

B. Front yard. A front yard shall be at least 20 ft.

C. Side yard. A side yard shall be at least 10 ft, except on corner lots a side yard shall be at least 20 ft on the side abutting the street. For interior single-family attached units, side yards are not required.

D. Rear yard. A rear yard shall be at least 20 ft.

E. Off-street parking and loading. As specified in Chapter 19.600.

F. Height restriction. Maximum height of a structure shall be 2.5 stories or 35 ft, whichever is less.

G. Lot coverage. Maximum area that may be covered by 1 dwelling structure and accessory buildings shall not exceed 30% of the total area of the lot.

H. Minimum vegetation. Minimum area that must be left or planted in trees, grass, shrubs, barkdust for planting beds, etc., will be 35% of the total area of the lot.

I. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 ft except as provided in the Land Division Ordinance. The lot for an interior single-family attached unit shall abut a public street for at least 20 ft.

J. Minimum and maximum density. Development densities for subdivision, planned development, mixed use development, and other proposals reviewed by the Planning Commission, pursuant to Section 19.1006 Type III Review, shall be at least 3.5 and not more than 4.4 dwelling units per net acre.

K. Transportation requirements and standards. As specified in Chapter 19.700.

## 19.302 RESIDENTIAL ZONE R-7

In an R-7 Zone the following regulations shall apply:

### 19.302.1 Uses Permitted Outright

In an R-7 Zone the following uses and their accessory uses are permitted outright:

A. Single-family detached dwelling;

B. Residential home;

C. Agricultural or horticultural use, provided that:

1. A retail or wholesale business sales office is not maintained on the premises, and
2. Poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock;

D. Any other use similar to the above and not listed elsewhere.

### 19.302.2 Conditional Uses Permitted

In an R-7 Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

A. Temporary real estate office in a subdivision;

B. Single-family attached dwelling;

C. Senior and retirement housing;

D. Type 2 accessory dwelling unit;

E. Any other use similar to the above and not listed elsewhere.

### 19.302.3 Standards

In an R-7 Zone the following standards shall apply:

A. Lot size. Lot area shall be at least 7,000 sq ft. For a single-family attached dwelling the lot area shall be an average of at least 7,000 sq ft per unit. Lot width shall be at least 60 ft. The minimum lot width shall be 30 ft for interior single-family attached units. Lot depth shall be at least 80 ft.

B. Front yard. A front yard shall be at least 20 ft.

C. Side yard. A side yard shall be at least 5 ft and 1 side yard shall be at least 10 ft, except on corner lots a side yard shall be at least 20 ft on the side abutting the street. For interior single-family attached units, side yards are not required.

D. Rear yard. A rear yard shall be at least 20 ft.

E. Off-street parking and loading. As specified in Chapter 19.600.

F. Height restriction. Maximum height of a structure shall be 2.5 stories or 35 ft, whichever is less.

G. Lot coverage. Maximum area that may be covered by the dwelling structure and accessory buildings shall not exceed 30% of the total area of the lot.

H. Minimum vegetation. Minimum area that must be left or planted in trees, grass, shrubs, barkdust for planting beds, etc., will be 30% of the total area of the lot.

I. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 ft, except as provided in the Land Division Ordinance.

J. Minimum and maximum density. Development densities for subdivision, planned development, mixed use development, and other proposals reviewed by the Planning Commission, pursuant to Section 19.1006 Type III Review, shall be at least 5.0 and not more than 6.2 dwelling units per net acre.

K. Transportation requirements and standards. As specified in Chapter 19.700.

## 19.303 RESIDENTIAL ZONE R-5

In an R-5 Zone the following regulations shall apply:

### 19.303.1 Uses Permitted Outright

In an R-5 Zone the following uses and their accessory uses are permitted outright:

A. Single-family detached dwelling;

B. Single-family attached dwelling;

C. Residential home;

D. Agricultural or horticultural use, provided that:

1. A retail or wholesale business sales office is not maintained on the premises, and
2. Poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 ft per head of livestock;

E. Any other use similar to the above and not listed elsewhere.

### 19.303.2 Conditional Uses Permitted

In an R-5 Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

A. Temporary real estate office in a subdivision;

B. Senior and retirement housing;

C. Type 2 accessory dwelling unit;

D. Any other use similar to the above and not listed elsewhere.

### 19.303.3 Standards

In an R-5 Zone the following standards shall apply:

A. Lot size. Lot area shall be at least 5,000 sq ft. For single-family attached dwellings the lot area shall be an average of at least 5,000 sq ft per dwelling unit. Lot width shall be at least 50 ft. For interior single-family attached dwellings the lot width shall be at least 30 ft. Lot depth shall be at least 80 ft.

B. Front yard. A front yard shall be at least 20 ft.

C. Side yard. A side yard shall be at least 5 ft, and there shall be additional 1 ft of side yard for each 3 ft of height over 2 stories or 25 ft, whichever is less, except on corner lots a side yard shall be at least 15 ft on the side abutting the street. For interior, single-family attached dwellings side yards are not required.

D. Rear yard. A rear yard shall be at least 20 ft.

E. Off-street parking and loading. As specified in Chapter 19.600.

F. Height restriction. Maximum height of a structure shall be 2.5 stories or 35 ft, whichever is less.

G. Lot coverage. Maximum area that may be covered by the dwelling structure and accessory buildings shall not exceed 35% of the total area of the lot.

H. Minimum vegetation. Minimum area that must be left or planted in trees, grass, shrubs, barkdust for planting beds, etc., will be 25% of the total area of the lot.

I. Transition area. A transition area shall be maintained according to Subsection 19.504.6.

J. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 ft, except as provided in the Land Division Ordinance. The lots for interior single-family attached units shall abut a public street for at least 20 ft.

K. Minimum and maximum density. Development densities for subdivision, planned development, mixed use development, and other proposals reviewed by the Planning Commission, pursuant to Section 19.1006 Type III Review, shall be at least 7.0 and not more than 8.7 dwelling units per net acre.

L. Transportation requirements and standards. As specified in Chapter 19.700.

## 19.304 RESIDENTIAL ZONE R-3

In an R-3 Zone the following regulations shall apply:

### 19.304.1 Uses Permitted Outright

In an R-3 Zone the following uses and their accessory uses are permitted outright:

A. Single-family, detached dwelling;

B. Agricultural or horticultural use, provided that:

1. A retail or wholesale business sales office is not maintained on the premises, and
2. Poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock;

C. Single-family attached dwelling;

D. Residential home;

E. Any other uses similar to the above and not listed elsewhere.

### 19.304.2 Conditional Uses Permitted

In an R-3 Zone the following conditional uses and their accessory uses are permitted subject to provisions of Section 19.905:

A. Temporary real estate office in a subdivision;

B. Boarding, lodging, or rooming house;

C. Senior and retirement housing;

D. Offices, studios, or clinics of accountants, architects, artists, attorneys, authors, writers, dentists, designers, engineers, investment counselors, landscape architects, management consultants, physicians, surgeons, psychologists, and others of a professional nature whose activities generate a minimal amount of traffic;

E. Multifamily condominium or apartment dwelling;

F. Type 2 accessory dwelling unit;

G. Congregate housing facility;

H. Any other uses similar to the above and not listed elsewhere.

### 19.304.3 Standards

In an R-3 Zone the following standards shall apply:

A. Lot size. Lot area shall be at least 5,000 sq ft. For single-family attached dwellings the lot area shall be an average of at least 3,000 sq ft per dwelling unit. Lot width shall be at least 50 ft. For interior single-family attached units the lot width shall be at least 30 ft. Lot depth shall be at least 80 ft.

B. Front yard. A front yard shall be at least 15 ft.

C. Side yard. A side yard shall be at least 5 ft, and there shall be additional 1 ft of side yard for each 3 ft of height over 2 stories or 25 ft, whichever is less, except on corner lots a side yard shall be at least 15 ft on the side abutting the street. For interior single-family attached and condominium units, side yards are not required.

D. Rear yard. A rear yard shall be at least 15 ft.

E. Off-street parking and loading. As specified in Chapter 19.600.

F. Height restriction. Maximum height of a structure shall be 2.5 stories or 35 ft, whichever is less.

G. Lot coverage. Maximum area that may be covered by the dwelling structure and accessory buildings shall not exceed 40% of the total area of the lot.

H. Minimum Vegetation and Open Space. Minimum area that must be left or planted in trees, grass, shrubs, barkdust for planting beds, or left as open space or used as recreational area, etc., will be 35% of the total area of the lot. At least half of this area will be of the same general character as the area with dwelling units.

I. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 ft, except as provided in the Land Division Ordinance. Lots for interior single-family attached units will abut a public street for at least 20 ft.

J. Transition Area. A transition area shall be maintained according to Subsection 19.504.6.

K. Minimum and maximum density. Development densities for subdivision, planned development, mixed use development, and other proposals reviewed by the Planning Commission, pursuant to Section 19.1006 Type III Review, shall be at least 11.6 and not more than 14.5 dwelling units per net acre.

L. Transportation requirements and standards. As specified in Chapter 19.700.

## 19.305 RESIDENTIAL ZONE R-2.5

In an R-2.5 Zone the following regulations shall apply:

### 19.305.1 Permitted Uses

A. Single-family dwelling;

B. Single-family attached dwelling;

C. Residential home;

D. Agricultural or horticultural uses, provided that:

1. A retail or wholesale business sales office is not maintained on the premises, and
2. Poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock;

E. Any other use similar to the above and not listed elsewhere.

### 19.305.2 Conditional Uses

A. Boarding, lodging, or rooming house;

B. Senior and retirement housing;

C. Multifamily condominium or apartment;

D. Congregate housing facility;

E. Offices, studios, or clinics of accountants, architects, artists, attorneys, authors, writers, dentists, designers, engineers, investment counselors, landscape architects, management consultants, physicians, surgeons, psychologists, and others of a professional nature whose activities generate a minimal amount of traffic;

F. Any other use similar to the above and not listed elsewhere.

### 19.305.3 Standards

In an R-2.5 Zone the following standards shall apply:

A. Lot size. Single-family dwellings: 3,000 sq ft. Attached dwellings: 2,500 sq ft average per unit.

B. Lot dimensions. Width at building line, measured at front setback: (1) single-family dwelling—40 ft; (2) attached dwellings—25 ft; (3) depth for all types of uses—75 ft.

C. Setbacks. Front yard: 15 ft. Side yard: A side yard shall be at least 5 ft, and there shall be additional 1 ft of side yard for each 3 ft of height over 2 stories or 25 ft, whichever is less, except on corner lots a side yard shall be at least 15 ft on the side abutting the street. For interior single-family attached and condominium units, side yards are not required.

D. Height of structure. Maximum height shall not exceed 35 ft.

E. Parking. As specified in Chapter 19.600.

F. Lot coverage. 40% maximum.

G. Minimum vegetation and open space. 35% of the lot must be planted in trees, grass, shrubs, barkdust for planting beds, or left as open space, or used as recreational area. At

least half of this area will be of the same general character as the area with the dwelling units.

H. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 ft, except as provided in the Land Division Ordinance, and attached residential lots which shall abut a public street for at least 20 ft.

I. Transition area. A transition area shall be maintained according to Subsection 19.504.6.

J. Minimum and maximum density. Development densities for subdivision, planned development, mixed use development, and other proposals reviewed by the Planning Commission, pursuant to Section 19.1006 Type III Review, shall be at least 11.6 and not more than 17.4 dwelling units per net acre.

K. Transportation requirements and standards. As specified in Chapter 19.700.

## 19.306 RESIDENTIAL ZONE R-2

In an R-2 Zone the following regulations shall apply:

### 19.306.1 Uses Permitted Outright

In an R-2 Zone the following uses and their accessory uses are permitted outright:

A. Single-family detached dwelling;

B. Residential home;

C. Agricultural or horticultural use, provided that:

   1. A retail or wholesale business sales office is not maintained on the premises, and

   2. Poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock;

D. Single-family attached, multifamily condominiums, multifamily apartment dwellings;

E. Congregate housing facility;

F. Any other use similar to the above and not listed elsewhere.

### 19.306.2 Conditional Uses Permitted

In an R-2 Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

A. Boarding, lodging, or rooming house;

B. Senior and retirement housing;

C. Offices, studios, or clinics of accountants, architects, artists, attorneys, authors, writers, dentists, designers, engineers, investment counselors, landscape architects, management consultants, physicians, surgeons, psychologists, and others of a professional nature whose activities generate a minimal amount of traffic, except in transitional areas;

D. Hotel or motel;

E. Marina;

F. Type 2 accessory dwelling unit;

G. Any other use similar to the above and not listed elsewhere.

### 19.306.3 Standards

In an R-2 Zone the following standards shall apply:

A. Lot size. Lot area shall be at least 5,000 sq ft. Lot area for the first dwelling unit shall be at least 5,000 sq ft and there shall be not less than an average of 2,500 sq ft for each dwelling unit over 1. Lot width shall be at least 50 ft. For interior single-family attached and condominium units, lot width shall be at least 30 ft. Lot depth shall be at least 80 ft. Single-family attached, multifamily condominium, and multifamily apartment dwellings are permitted with less than 3,000 sq ft per unit provided that traffic does not move through adjacent lower-density areas.

B. Front yard. A front yard shall be at least 15 ft.

C. Side yard. A side yard shall be at least 5 ft, and there shall be additional 1 ft of side yard for each 3 ft of height over 2 stories or 25 ft, whichever is less, except on corner lots a side yard shall be at least 15 ft on the side abutting the street. For interior single-family attached and condominium units, side yards are not required.

D. Rear yard. A rear yard shall be at least 15 ft.

E. Off-street parking and loading. As specified in Chapter 19.600.

F. Height restriction. Maximum height of a structure shall be 3 stories or 45 ft, whichever is less.

G. Lot coverage. Maximum area that may be covered by the dwelling structure and accessory buildings shall not exceed 45% of the total area of the lot.

H. Minimum vegetation and open space. Minimum area that must be left or planted in trees, grass, shrubs, barkdust for planting beds, or left as open space or used as recreational area, etc., will be 35% of the total area of the lot. At least half of this area will be of the same general character as the area with dwelling units.

I. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 ft, except as provided in the Land Division Ordinance. Lots for interior single-family attached and condominium units shall abut a public street for at least 20 ft.

J. Transition area. A transition area shall be maintained according to Subsection 19.504.6.

K. Minimum and maximum density. Development densities for subdivision, planned development, mixed use development, and other proposals reviewed by the Planning Commission, pursuant to Section 19.1006 Type III Review, shall be at least 11.6 and not more than 17.4 dwelling units per net acre.

L. Transportation requirements and standards. As specified in Chapter 19.700.

## 19.307 RESIDENTIAL ZONE R-1

In an R-1 Zone the following regulations shall apply:

### 19.307.1 Uses Permitted Outright

In an R-1 Zone the following uses and accessory uses are permitted outright:

A. Single-family detached dwelling;

B. Agricultural or horticultural use, provided that:

1. A retail or wholesale business sales office is not maintained on the premises, and
2. Poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock;

C. Single-family attached, multifamily condominium, multifamily apartment dwelling;

(Note: The above type dwellings are permitted with less than 3,000 sq ft per unit provided that traffic does not move through adjacent lower-density areas)

D. Residential home;

E. Senior and retirement housing;

F. Congregate housing facility;

G. Any other use similar to the above and not listed elsewhere.

### 19.307.2 Conditional Uses Permitted

In an R-1 Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

A. Temporary real estate office in a subdivision;

B. Boarding, lodging or rooming house;

C. Offices, studios, or clinics of accountants, architects, artists, attorneys, authors, writers, dentists, designers, engineers, investment counselors, landscape architects, management consultants, physicians, surgeons, psychologists, and others of a professional nature whose activities generate a minimal amount of traffic, except in transitional areas;

D. Hotel or motel;

E. Marina;

F. Any other use similar to the above and not listed elsewhere.

### 19.307.3 Standards

In an R-1 Zone the following standards shall apply:

A. Lot size. Lot area shall be at least 5,000 sq ft. Lot area for the first dwelling unit shall be at least 5,000 sq ft and there shall be not less than 1,400 sq ft for each dwelling unit over 1. Lot width shall be at least 50 ft. Lot width for single-family attached and condominium units shall be at least 30 ft. Lot depth shall be at least 80 ft. Single-family attached, multifamily condominium, multifamily apartment dwellings are permitted with less than 3,000 sq ft per unit provided that traffic does not move through adjacent lower-density areas.

B. Front yard. A front yard shall be at least 15 ft.

C. Side yard. A side yard shall be at least 5 ft, and there shall be additional 1 ft of side yard for each 3 ft of height over 2 stories or 25 ft, whichever is less, except on corner lots a side yard shall be at least 15 ft on the side abutting the street. For interior single-family attached and condominium units, side yards are not required.

D. Rear yard. A rear yard shall be at least 15 ft.

E. Off-street parking and loading. As specified in Chapter 19.600.

F. Height restriction. Maximum height of a structure shall be 3 stories or 45 ft, whichever is less.

G. Lot coverage. Maximum area that may be covered by the dwelling structure and accessory buildings shall not exceed 45% of the total area of the lot.

H. Minimum vegetation and open spaces. Minimum area that must be left or planted in trees, grass, shrubs, barkdust for planting beds, or left as open space or used as recreational area, etc. will be 35% of the total area of the lot. At least half of this area will be of the same general character as the area with dwelling units.

I. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 ft, except as provided in the Land Division Ordinance. Lots for interior single-family attached and condominium units shall abut a public street for at least 20 ft.

J. Transition area. A transitional area shall be maintained according to Subsection 19.504.6.

K. Use restrictions. Authorized commercial uses are permitted on the ground floor only. Office uses are permitted on the ground level and first floor. At least 50% of the floor area within a project shall be used for residential purposes.

L. Minimum and maximum density. Residential densities for subdivision, planned development, mixed use development, and other proposals reviewed by the Planning Commission, pursuant to Section 19.1006 Type III Review, shall be at least 25 and not more than 32 dwelling units per net acre.

M. Transportation requirements and standards. As specified in Chapter 19.700.

## 19.308 RESIDENTIAL-BUSINESS OFFICE ZONE R-1-B

In an R-1-B Zone the following regulations shall apply:

### 19.308.1 Uses Permitted Outright

In an R-1-B Zone the following uses and their accessory uses are permitted outright:

A. Single-family detached dwelling;

B. Agricultural or horticultural use, provided that:

1. A retail or wholesale business sales office is not maintained on the premises, and
2. Poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock;

C. Single-family attached dwelling;

D. Residential home;

E. Condominium, multifamily condominium, and multifamily apartment dwellings;

F. Congregate housing facility;

G. Senior and retirement housing;

H. Offices, studios, or clinics of accountants, architects, artists, attorneys, authors, writers, dentists, designers, engineers, investment counselors, landscape architects, management consultants, physicians, surgeons, psychologists, and others whose activities generate a minimal amount of traffic;

I. Offices of administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, scientific or statistical organizations whose activities generate a minimal amount of traffic;

J. Any other use similar to the above and not listed elsewhere.

### 19.308.2 Conditional Uses Permitted

In an R-1-B Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

A. Temporary real estate office in a subdivision;

B. Boarding, lodging, or rooming house;

C. Hotel or motel;

D. Marina;

E. Any other use similar to the above and not listed elsewhere.

### 19.308.3 Standards

In an R-1-B Zone the following standards shall apply:

A. Lot size. Lot area shall be at least 5,000 sq ft. Lot area for the first dwelling unit shall be at least 5,000 sq ft and for each dwelling unit over 1 there shall be not less than an average of 1,400 sq ft. Lot width shall be at least 50 ft. For interior single-family attached and condominium units this lot width shall be at least 30 ft.

B. Front yard. A front yard shall be at least 15 ft.

C. Side yard. A side yard shall be at least 5 ft, and there shall be additional 1 ft of side yard for each 3 ft of height over 2 stories or 25 ft, whichever is less, except on corner lots a side yard shall be at least 15 ft on the side abutting the street.

D. Rear yard. A rear yard shall be at least 15 ft.

E. Off-street parking and loading. As specified in Chapter 19.600.

F. Height restriction. Maximum height of a structure shall be 3 stories or 45 ft, whichever is less.

G. Lot coverage. Maximum area that may be covered by the principal structure and accessory buildings shall not exceed 50% of the total area of the lot.

H. Minimum vegetation. Minimum area that must be left or planted in trees, grass, shrubs, etc. shall be 15% of the total area of the lot.

I. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 ft, except as provided in the Land Division Ordinance. Lots for interior single-family attached and condominium units shall abut a public street for at least 20 ft.

J. Transition area. A transition area shall be maintained according to Subsection 19.504.6.

K. Minimum and maximum density. Residential densities for subdivision, planned development, mixed use development, and other proposals reviewed by the Planning Commission, pursuant to Section 19.1006 Type III Review, shall be at least 25 and not more than 32 dwelling units per net acre.

L. Transportation requirements and standards. As specified in Chapter 19.700.

## 19.309 RESIDENTIAL-OFFICE-COMMERCIAL ZONE R-O-C

In an R-O-C Zone the following regulations shall apply:

### 19.309.1 Uses Permitted Outright

In an R-O-C Zone the following uses and their accessory uses are permitted outright:

A. Single-family detached dwelling;

B. Single-family attached dwelling;

C. Residential home;

D. Multifamily condominium dwelling;

E. Multifamily apartment dwelling;

F. Congregate housing facility;

G. Senior and retirement housing;

H. Offices;

I. Retail trade establishment such as a food store, drugstore, gift shop, hardware store selling primarily from a shelf-goods inventory;

J. Personal service business such as a barber shop, tailor shop, or laundry and dry cleaning pickup station;

K. Funeral home;

L. Commercial recreation and motion picture theater;

M. Eating establishment;

N. Hotel or motel;

O. Parking facility;

P. Repair, maintenance, or service of the type of goods to be found in any permitted retail trade establishment;

Q. Financial institution;

R. Trade or commercial school;

S. Department or furniture store;

T. Any other use similar to the above and not listed elsewhere.

### 19.309.2 Conditional Uses Permitted

In an R-O-C Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

A. Boarding, lodging, or rooming house;

B. Any other use similar to the above and not listed elsewhere.

### 19.309.3 Standards

In an R-O-C Zone the following standards shall apply:

A. Lot size. Lot area shall be at least 5,000 sq ft. Lot area for the first dwelling unit shall be at least 5,000 sq ft and for dwelling units over 1 there shall be not less than an average of

1,400 sq ft. Lot width shall be at least 50 ft. Lot width for interior single-family attached and condominium units shall be at least 30 ft. Lot depth shall be at least 80 ft.

B. Front yard. A front yard shall be at least 15 ft.

C. Side yard. A side yard shall be at least 5 ft, and there shall be additional 1 ft of side yard for each 3 ft of height over 2 stories or 25 ft, whichever is less, except on corner lots a side yard shall be at least 15 ft on the side abutting the street. For interior single-family attached and condominium units, side yards are not required.

D. Rear yard. A rear yard shall be at least 15 ft.

E. Off-street parking and loading. As specified in Chapter 19.600.

F. Height restriction. Maximum height of a structure shall be 3 stories or 45 ft, whichever is less.

G. Use restrictions. Authorized commercial uses are permitted on the ground floor only. Office uses are permitted on the ground level and first floor. At least 50% of the floor area within a project shall be used for residential purposes.

H. Lot coverage. Maximum area that may be covered by the principal structure and accessory buildings shall not exceed 50% of the total area of the lot.

I. Minimum vegetation. Minimum area that must be left or planted in trees, grass, shrubs, barkdust for planting beds, etc., shall be 15% of the total area of the lot.

K. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 ft, except as provided in the Land Division Ordinance. Lots for interior single-family attached and condominium units shall abut a public street for at least 20 ft.

K. Transition area. A transition area shall be maintained according to Subsection 19.504.6.

L. Minimum and maximum density. Residential densities for subdivision, planned development, mixed use development, and other proposals reviewed by the Planning Commission, pursuant to Section 19.1006 Type III Review, shall be at least 25 and not more than 32 dwelling units per net acre.

M. Transportation requirements and standards. As specified in Chapter 19.700.

**19.309.4 Prohibited Uses**

The following uses and their accessory uses are prohibited: Adult entertainment business.

## 19.310 DOWNTOWN ZONES

### 19.310.1 Purpose

This section of the Zoning Ordinance implements the Downtown and Riverfront Land Use Framework Plan, Milwaukie Comprehensive Plan, and Town Center Master Plan. The downtown and riverfront area is envisioned as the focus of the community. Five zones are designated to reflect the distinctions between different areas of the Downtown and Riverfront Land Use Framework Plan, and to focus pedestrian-oriented retail uses to the traditional downtown core along Main Street. Specific development standards, public area requirements, and design standards are adopted for the downtown zones to assure an active, attractive, and accessible environment for shoppers, employees and residents.

### 19.310.2 Characteristics of the Downtown Zones

Five specific zones are adopted to implement the Downtown and Riverfront Land Use Framework Plan. The zones are shown on Figure 19.310-1. The "Zoning Map of Milwaukie, Oregon" provides a larger-scale map of zone boundaries. The zones reflect the varied land uses, densities, and urban design character planned for different areas, as described and illustrated in the Downtown and Riverfront Land Use Framework Plan. The characteristics of the individual zones are described below.

A. Downtown Storefront (DS)

The Downtown Storefront Zone is established to preserve and enhance the commercial "Main Street" character of downtown Milwaukie, ensuring that new development in areas designated DS is compatible with this desired character. This zone allows a full range of retail, service, business, and residential uses. Retail uses are required on the ground floors of buildings fronting on Main Street. Office and/or residential uses are allowed on upper floors. Industrial uses are not allowed. The desired character for this zone includes buildings that are built to the right-of-way and oriented toward the pedestrian, with primary entries located along streets rather than parking lots. A "Village Concept Area" has been established in the DS Zone to allow a broader mix of uses on a City-owned site adjacent to the library, City Hall, a high-density residential area to the north, and existing Main Street storefront uses. These uses include townhouses and multifamily apartment/condominium buildings.

B. Downtown Commercial (DC)

The Downtown Commercial Zone is established to allow auto-accommodating commercial development in the area between McLoughlin Boulevard and Main Street, north of Harrison Street. A range of retail, service, office, and residential uses is permitted to support a gradual transition to higher densities and a greater mix of uses. Boulevard enhancements will improve the visual character of McLoughlin Boulevard and provide a link to the riverfront and adjacent downtown zones. The desired character for this zone includes buildings that engage at least 1 street right-of-way and include a pedestrian-oriented entry and well-landscaped parking lots.

C. Downtown Office (DO)

The Downtown Office Zone is established to provide for office, entertainment, and hotel uses along high-visibility major arterial streets, as designated by the City of Milwaukie's Transportation System Plan. Retail commercial uses are limited to support the primary uses (office, entertainment, and hotel establishments) and encourage retail development along

Main Street. The desired character for this zone will vary depending on the nature of the proposed use and individual site features.

D. Downtown Residential (DR)

The Downtown Residential Zone is established to increase housing opportunities in close proximity to downtown shopping, transit, and open space amenities. The major types of new housing will be apartments and condominiums. Minimum densities of 30 units per acre will assure that land is used efficiently and will increase the customer base for nearby businesses. Additionally, the higher densities will support urban features such as parking under structures and durable building materials. Development at minimum densities of 10 units per acre up to a maximum of 30 units per acre will be permitted in a defined portion of the Downtown Residential Zone to provide a transition to lower-density residential zones. The desired character for the Downtown Residential Zone includes buildings located close to and oriented to the public sidewalk, with off-street parking located under or internal to building sites.

E. Downtown Open Space (DOS)

The Downtown Open Space Zone is established to implement the "Public" designation of the Milwaukie Comprehensive Plan and to provide a specific zone to accommodate open space, park, and riverfront uses. The Downtown Open Space Zone is generally applied to lands that are in public ownership along the Willamette River, Kellogg Creek, Spring Creek, and Johnson Creek in the downtown area. The desired character for the Downtown Open Space Zone includes parkland, open space, and riverfront amenities.

### 19.310.3 Uses

A. Permitted Uses

Uses allowed in the downtown zones are listed in Table 19.310.3 with a "P." These uses are allowed if they comply with the development and design standards, any applicable design guidelines, and other regulations of this title.

**Table 19.310.3**
**Downtown Zones—Uses**

| Use Categories | Downtown Storefront | Downtown Commercial | Downtown Office | Downtown Residential | Downtown Open Space |
|---|---|---|---|---|---|
| **Residential** | | | | | |
| Single-family detached | N | N | N | N | N |
| Townhouse | L[1] | N | N | L[1] | N |
| Multifamily apartment/ condominium | L[10] | P | N | P | N |
| Senior and retirement housing | N | P | N | P | N |
| Second-floor housing | P | P | P | P | N |
| **Commercial/Office**[1] | | | | | |
| Automobile service station | N | N | N | N | N |
| Automobile repair | N | L[2] | N | N | N |
| Commercial recreation | P | P | P | N | N |
| Eating/drinking establishment | P | P | L[3] | N | N |
| Financial institution | P | P | P | N | N |

| Table 19.310.3 CONTINUED<br>Downtown Zones—Uses | | | | | |
|---|---|---|---|---|---|
| **Use Categories** | **Downtown Storefront** | **Downtown Commercial** | **Downtown Office** | **Downtown Residential** | **Downtown Open Space** |
| **Commercial/Office[1] CONTINUED** | | | | | |
| Theater | P | P | P | N | N |
| Hotel/motel | N | P | P | N | N |
| Office, professional and administrative | L[4] | P | P | L[5] | N |
| Parking facility | P | P | P | N | L[6] |
| Personal/business services | L[7] | P | P | L[5] | N |
| Retail trade | P | P | L[3] | L[5] | N |
| Industrial | N | N | N | N | N |
| **Other** | | | | | |
| Adult entertainment | N | N | N | N | N |
| Community service uses | L[8] | L[8] | L[8] | L[8] | L[8] |
| Marinas, boat ramp | N | N | N | N | P |
| Parks, plazas, open space | P | P | P | P | P |
| Transit centers | L[9] | L[9] | N | N | N |

[1] Certain uses are permitted in the Downtown Storefront Zone, but are not allowed in the required retail ground floor use area along Main Street (see Figure 19.310-2 and Subsection 19.310.4.B.7 for details).

B. Limited Uses

Uses that are allowed subject to limitations are listed in Table 19.310.3 with an "L." These uses are allowed if they comply with the limitations listed in Subsection 19.310.3.G below, and if they comply with the development and design standards, any applicable design guidelines, and other regulations of this title.

C. Nonconforming Uses

Existing structures and uses that do not meet the standards for a particular downtown zone may continue in existence. Alteration of a nonconforming use or structure that is not in compliance with applicable standards shall be subject to the provisions of Chapter 19.800 Nonconforming Uses. For privately owned property with legal nonconforming uses and structures within the Downtown Open Space Zone, Subsection 19.803.2 is not applicable, but all other provisions of Chapter 19.800 shall apply.

D. Prohibited Uses

Uses listed in Table 19.310.3 with an "N" are prohibited as new uses.

E. Accessory Uses

Uses that are accessory to a primary use are allowed if they comply with all development standards. Accessory uses include but are not limited to restrooms in City parks and refreshment stands at the library.

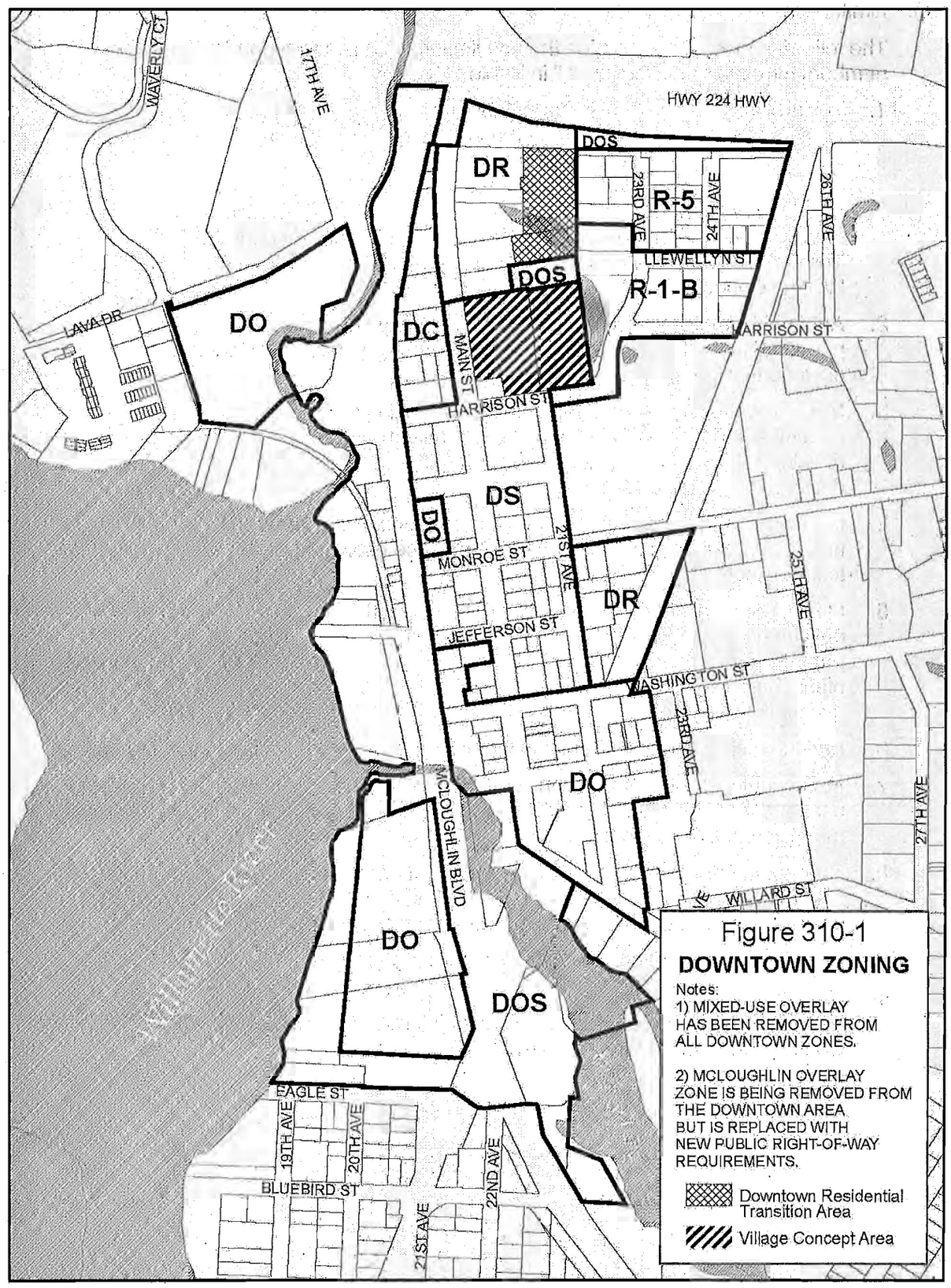
F. Similar Uses

The Planning Director, through a Type I review, may determine that a use that is not listed is considered similar to a listed use in Table 19.310.3. The unlisted use shall be subject to the standards applicable to the similar listed use.

G. Limited Uses

The following provisions describe the use limitations and correspond with the footnote numbers for uses listed with an "L" in Table 19.310.3.

1. Townhouse development is permitted only in a limited area of the Downtown Residential Zone as identified on the Zoning Map (see "Transitional Residential Area" on Figure 19.310-1). This limited use provision is intended to provide an opportunity for owned, attached housing at a minimum density of 10 units per acre. Townhouse development is permitted only in a limited area of the Downtown Storefront Zone as identified on the Zoning Map (see "Village Concept Area" on Figure 19.310-1). Townhouses shall not be located within 50 ft of the Main Street frontage within the "Village Concept Area."
2. Automobile/motor vehicle repair (excluding body and fender repair and painting) is permitted in the Downtown Commercial Zone when conducted within a completely enclosed building.
3. In the Downtown Office Zone, eating and drinking establishments and retail trade uses are limited to 5,000 sq ft in floor area per use. These limited uses may only be developed as part of a mixed use building that supports a primary permitted use (e.g., office, hotel and financial institution).
4. In the portions of the Downtown Storefront Zone where ground-floor retail/restaurant uses are required (see Figure 19.310-2), office uses are only allowed on or above the second floor.
5. Office, personal service, and retail trade uses in the Downtown Residential Zone may only be developed as part of a mixed use building that includes housing. Office, personal service, and retail trade uses are limited to the ground floor; and individual office, personal service, or retail uses may not exceed 5,000 sq ft in floor area. Home occupations are permitted in accordance with Section 19.507 of this title.
6. Parking facilities in the Downtown Open Space Zone are limited to surface lots.
7. In the portions of the Downtown Storefront Zone where ground-floor retail/restaurant uses are required (see Figure 19.310-2), personal/business service uses are limited to a maximum of 25% of the ground floor area of an individual building.
8. New community service uses or expansion/alteration of an existing community service use in the downtown zones may be permitted if approved under Section 19.904 and shall comply with the development and design standards of this section.
9. Transit centers shall comply with the public area requirements for transit centers.
10. Multifamily apartment/condominium building development is permitted only in a limited area of the Downtown Storefront Zone as identified on the Zoning Map. See "Village Concept Area" on Figure 19.310-1.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LAVA DR
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DC
MAIN ST
HARRISON ST
HARRISON ST
DS
DO
MONROE ST
21ST AVE
DR
25TH AVE
JEFFERSON ST
WASHINGTON ST
23RD AVE
DO
MCLOUGHLIN BLVD
27TH AVE
WILLARD ST
Willamette River
DO
DOS
EAGLE ST
19TH AVE
20TH AVE
22ND AVE
BLUEBIRD ST
21ST AVE
Figure 310-1
DOWNTOWN ZONING
Notes:
1) MIXED-USE OVERLAY HAS BEEN REMOVED FROM ALL DOWNTOWN ZONES.
2) MCLOUGHLIN OVERLAY ZONE IS BEING REMOVED FROM THE DOWNTOWN AREA BUT IS REPLACED WITH NEW PUBLIC RIGHT-OF-WAY REQUIREMENTS.
Downtown Residential Transition Area
Village Concept Area

### 19.310.4 Development Standards

A. Purpose

The development standards address several issues of particular importance to maintaining the appropriate character for the downtown zones. Table 19.310.4 summarizes the development standards that apply in the downtown zones.

**Table 19.310.4**
**Downtown Zones—Development Standards**

| Standard | Downtown Storefront | Downtown Commercial | Downtown Office | Downtown Residential | Downtown Open Space |
|---|---|---|---|---|---|
| 1. Minimum lot size | 750 sq ft | 10,000 sq ft | 5,000 sq ft | 750/5,000 sq ft [1] | None |
| 2. Floor area ratio | | | | | |
| Minimum | 1:1 | 0.3:1 | 0.5:1 | NA | NA |
| Maximum | 4:1 | 2:1 | 3:1 | NA | NA |
| 3. Building height (see Figure 19.310-3) | | | | | |
| Minimum | 35′ | 25′ | 25′ | None | None |
| Maximum | 45′-55′ | 55′ | 65′ | 45′-65′ | None |
| 4. Residential density | | | | | |
| Minimum | None | None | None | 10-30 U/Acre | None |
| Maximum | None | None | None | None | None |
| 5. Street setback (see Figure 19.310-4) | | | | | |
| Minimum | 0′ | 0′ | 0′ | 0′ | 0′ |
| Maximum | 10′ | 50′ | 10′ | None | None |
| 6. Other setbacks (side and rear) | None | None | None | 15′[2] | None |
| 7. Ground-floor retail (see Figure 19.310-2) | Yes | Yes | Yes | No | No |
| 8. Ground-floor windows/doors (see Figure 19.310-5) | Yes | Yes | Yes | No | No |
| 9. Drive-through facilities | No | No | No | No | No |
| 10. Off-street parking required | No | Yes | No/Yes[3] | Yes | Yes |
| 11. Landscaping | None | 10% | None | 15% | 20% |

[1] Townhouse lots may be as small as 750 sq ft. All other lots created in the DR zone shall be a minimum of 5,000 sq ft.

[2] Setbacks are required only where the DR zone abuts a lower-density residential zone.

[3] Off-street parking is not required in the DO zone to the north of Washington Street and east of McLoughlin Boulevard. Off-street parking is required in the DO zone located outside of this boundary.

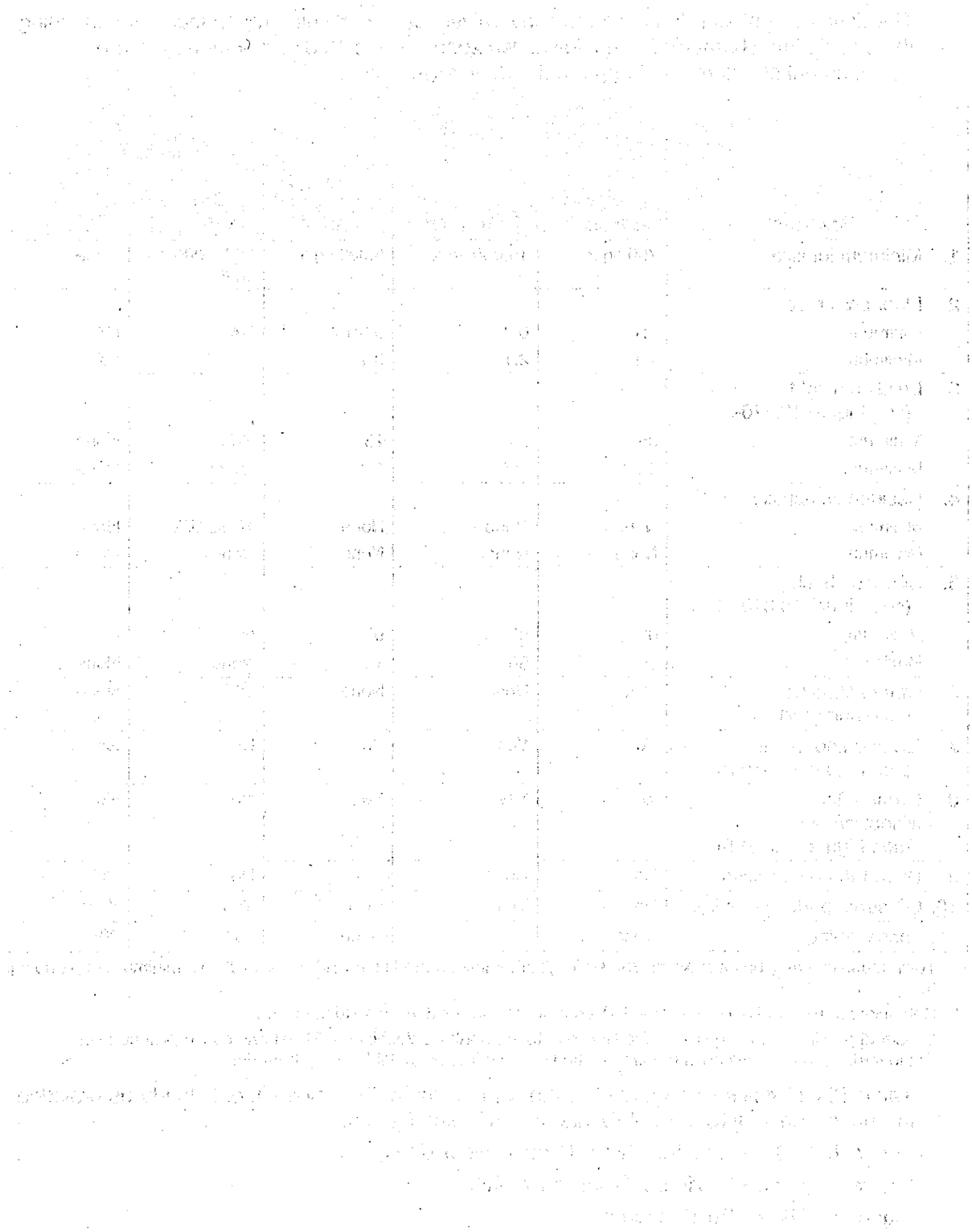
Table 19.310.4 is supplemented by the explanation of the development standards provided in Subsection 19.310.4.B below, and the following figures:

Figure 19.310-2—Required Retail Ground Floor Use Areas

Figure 19.310-3—Maximum Building Heights

Figure 19.310-4—Build-to Lines

Figure 19.310-5—Ground-Floor Windows and Openings



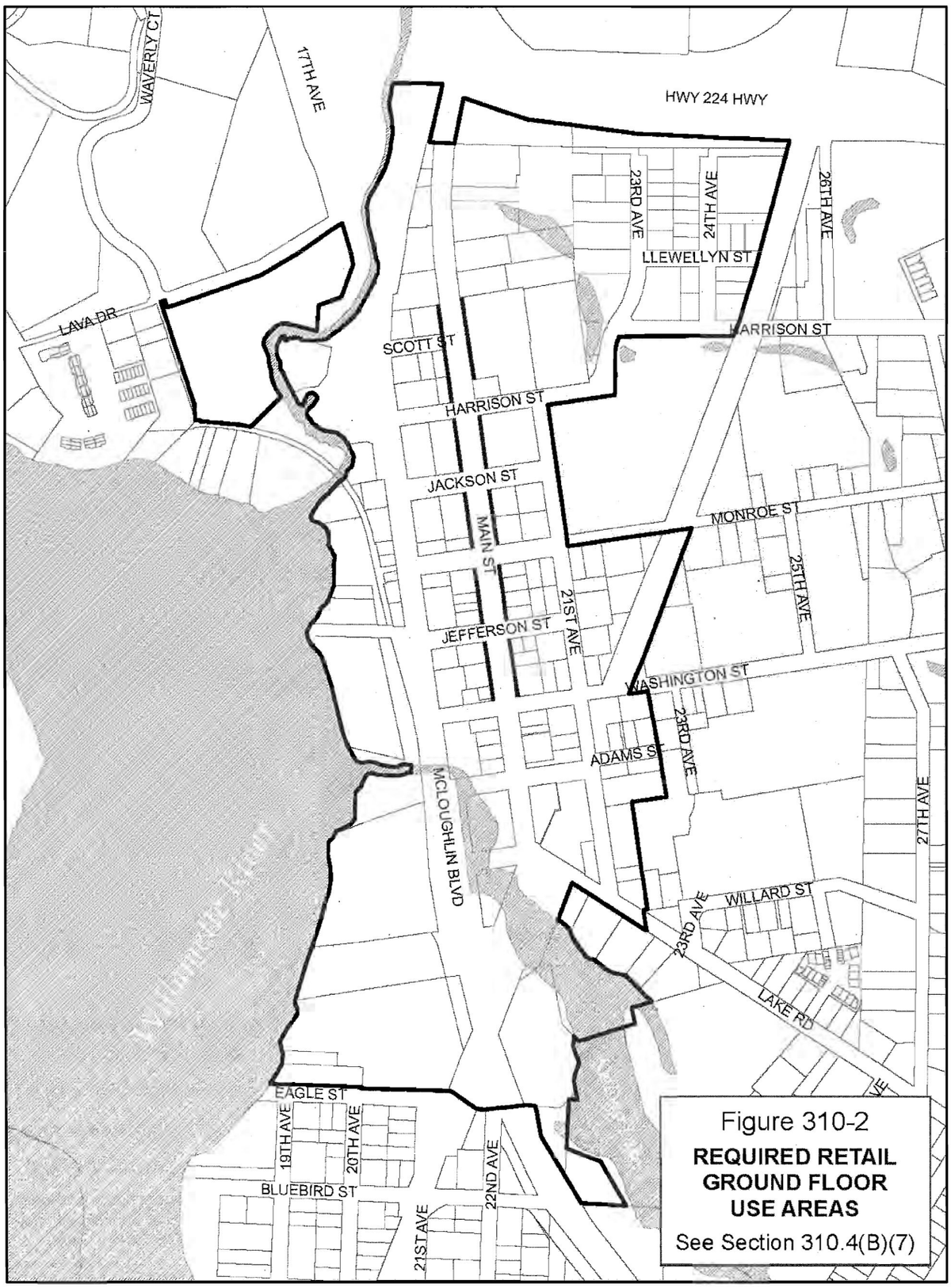
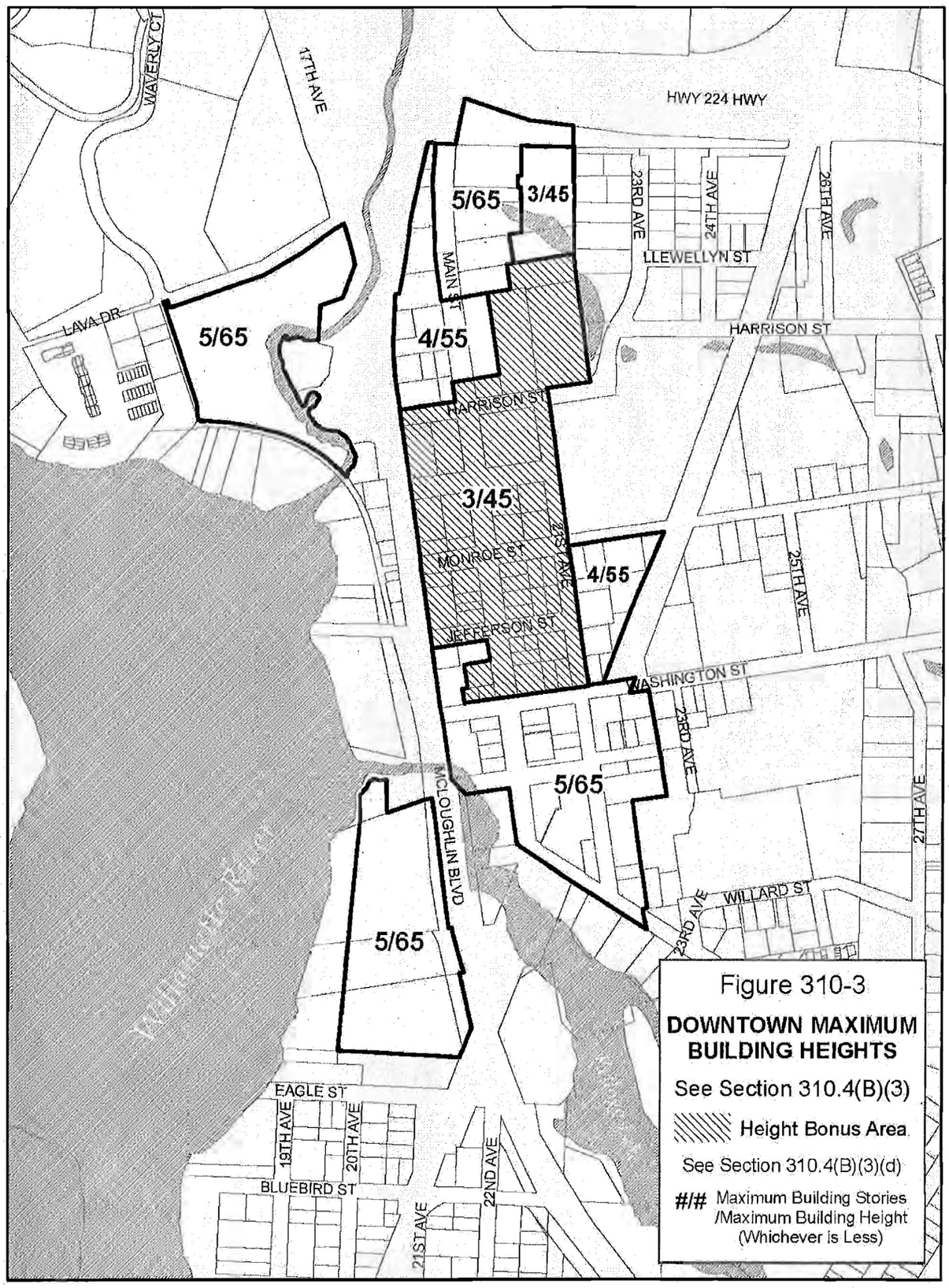



Figure 310-2
**REQUIRED RETAIL GROUND FLOOR USE AREAS**
See Section 310.4(B)(7)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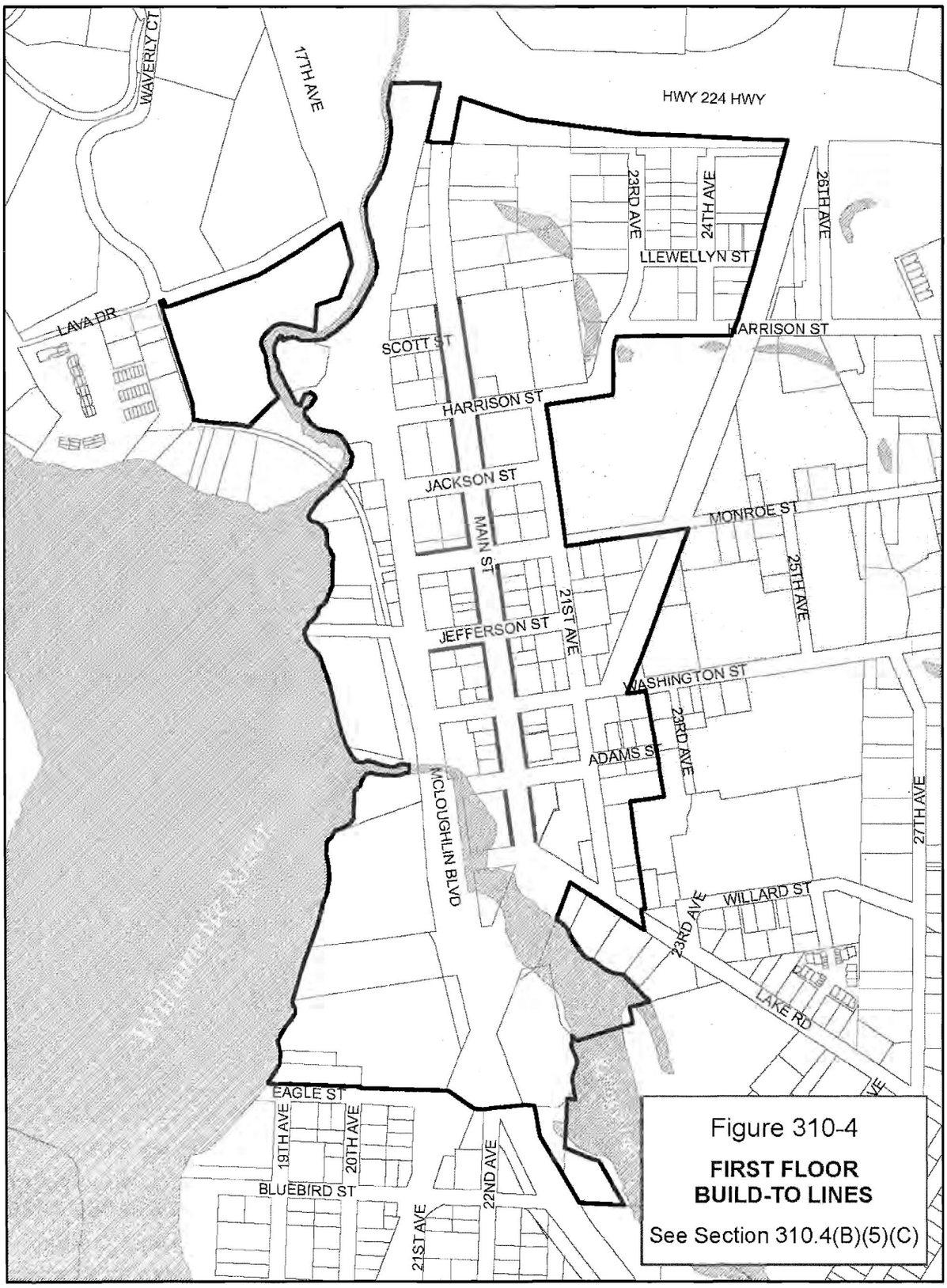
4/55
HARRISON ST
HARRISON ST
3/45
MONROE ST
21ST AVE
4/55
25TH AVE
JEFFERSON ST
WASHINGTON ST
23RD AVE
5/65
27TH AVE
MCLOUGHLIN BLVD
WILLARD ST
23RD AVE
5/65
EAGLE ST
19TH AVE
20TH AVE
BLUEBIRD ST
21ST AVE
22ND AVE
Figure 310-3
DOWNTOWN MAXIMUM BUILDING HEIGHTS
See Section 310.4(B)(3)
Height Bonus Area
See Section 310.4(B)(3)(d)
#/# Maximum Building Stories /Maximum Building Height (Whichever is Less)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SCOTT ST
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HARRISON ST
JACKSON ST
MAIN ST
MONROE ST
25TH AVE
21ST AVE
JEFFERSON ST
WASHINGTON ST
23RD AVE
ADAMS ST
MCLOUGHLIN BLVD
27TH AVE
WILLARD ST
23RD AVE
LAKE RD
EAGLE ST
19TH AVE
20TH AVE
22ND AVE
BLUEBIRD ST
21ST AVE
Figure 310-4
FIRST FLOOR
BUILD-TO LINES
See Section 310.4(B)(5)(C)

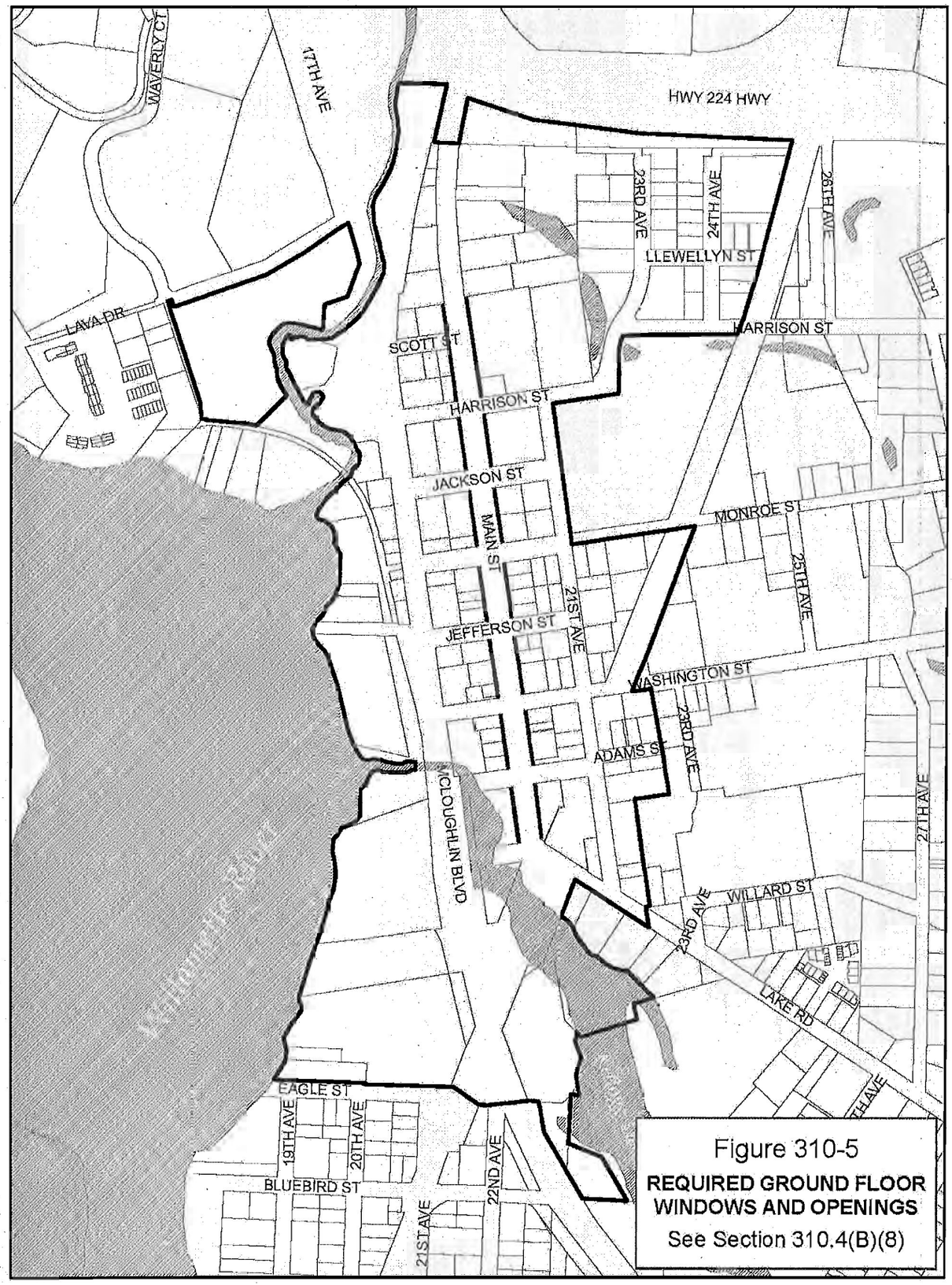



Figure 310-5
**REQUIRED GROUND FLOOR WINDOWS AND OPENINGS**
See Section 310.4(B)(8)

B. Explanation of Development Standards

1. Minimum Lot Size

New lots created in the downtown zones shall meet the minimum lot size standards of Table 19.310.4 as further described below.

a. New lots in the Downtown Storefront and Downtown Residential Zones (in the transitional residential area only) shall be a minimum of 750 sq ft, with a minimum street frontage of 15 ft.

b. New lots in the Downtown Office and Downtown Residential Zones (other than those in the transitional residential area) shall be a minimum of 5,000 sq ft, with a minimum street frontage of 30 ft.

c. New lots in the Downtown Commercial Zone shall be a minimum of 10,000 sq ft, with a minimum street frontage of 30 ft.

d. Land divisions shall comply with applicable provisions of the Land Division Ordinance (Title 17 of the Milwaukie Municipal Code).

2. Floor Area Ratios

The floor area ratio (FAR) is a tool for regulating the intensity of development. Minimum floor area ratios help to ensure that the intensity of development is controlled and that more intense forms are confined to appropriate areas of the downtown.

a. The minimum floor area ratios in Table 19.310.4 apply to all nonresidential building development.

b. Required minimum floor area ratios shall be calculated on a project-by-project basis and may include multiple contiguous parcels. In mixed use developments, residential floor space will be included in the calculations of floor area ratio to determine conformance with minimum FARs.

c. If a project is to be developed in phases, the required FAR must be met for the land area in the completed phase(s), without consideration of the land area devoted to future phases.

d. The following uses are exempt from the minimum floor area ratios: transit centers, public parks and plazas, and commercial parking facilities.

3. Building Height

Minimum and maximum building height standards serve several purposes. They promote a compatible building scale and relationship of one structure to another. Building height standards also establish a consistent streetscape.

a. Minimum building heights are specified in Table 19.310.4. The minimum building height of 35 ft for the Downtown Storefront Zone applies only to buildings that front on Main Street. Buildings fronting on other streets in the Downtown Storefront Zone shall be a minimum height of 25 ft.

b. The minimum building height standards apply to new commercial, office, and mixed use buildings. The standards do not apply to additions to existing buildings, accessory structures, or to buildings with less than 1,000 sq ft of floor area.

c. Maximum building heights are specified in Table 19.310.4 and illustrated on Figure 19.310-3. If there is a conflict between Table 19.310.4 and Figure 19.310-3, the maximum building height provisions of Figure 19.310-3 shall control.

d. An opportunity is provided for a height bonus in a defined area of the downtown plan. For the area identified on Figure 19.310-3 as the height bonus area, the base building height is 3 stories or 45 ft, whichever is less. However, if at least 1 floor or 25% of the gross floor area is devoted to residential uses, the building is allowed a height of 4 stories or 55 ft, whichever is less.

4. Residential Density

There is a minimal amount of land available for new housing development within the downtown zones. Minimum densities are applied in the Downtown Residential Zone to assure efficient use of land at densities that support transit use and nearby downtown businesses.

a. Minimum densities for the downtown residential transition area shall be 10 units per acre (see Figure 19.310-1). The maximum density for the residential transition area shall be 30 units per acre.

b. Minimum densities for standalone multifamily apartment/condominium dwellings and senior/retirement housing in the Downtown Residential and Downtown Commercial Zones shall be 30 units per acre. Maximum residential densities are controlled by height limits.

c. There are no minimum density requirements when residential units are developed as part of a mixed use building in the Downtown Storefront, Downtown Commercial, and Downtown Office Zones. The minimum density standards apply only to stand-alone residential buildings. Second-floor housing is allowed in the Downtown Storefront, Downtown Commercial, and Downtown Office Zones. Maximum residential densities for mixed use buildings are controlled by height limits.

5. Street Setbacks

Buildings are allowed and encouraged to build up to the street right-of-way in all downtown zones. Required build-to lines are established in specific areas of the downtown to ensure that the ground floors of buildings engage the street right-of-way (see Figure 19.310-4). The build-to line ensures compatibility and harmony between buildings, enabling a series of different buildings to maintain or establish a continuous vertical street wall.

a. No minimum street setbacks are required in any of the downtown zones.

b. The downtown zones are exempt from the clear vision area requirements of Chapter 12.24 of the Milwaukie Municipal Code, with the exception of driveway and street intersections with McLoughlin Boulevard.

c. First-floor build-to lines (required zero setbacks) are established for block faces identified on Figure 19.310-4. The build-to line includes a necessary degree of flexibility:

(1) Projections or recesses of up to 18 in are allowed.

(2) Doorways may be set back a maximum of 8 ft from the build-to line.

d. Maximum street setbacks of 10 ft are established for the Downtown Storefront and Downtown Office Zones. The 50-ft maximum setback for the Downtown Commercial Zone applies only to the McLoughlin Boulevard frontage. A build-to line (zero setback) is established for the Downtown Commercial Zone along the Main Street frontage.

6. Other Setbacks

   No specific side or rear yard setbacks are required for the downtown zones with the exception of the Downtown Residential Zone, where a minimum 15-ft side/rear yard setback is required where the Downtown Residential Zone abuts lower-density residential zones.

7. Ground-Floor Retail/Restaurants

   Retail uses and eating/drinking establishments are required at the ground floors of buildings fronting on Main Street and identified on Figure 19.310-2. This requirement will ensure that continuous retail storefronts and eating/drinking establishments are established and maintained along Main Street, to attract pedestrians and strengthen the shopping environment. When required, the retail uses and/or eating/drinking establishments must comprise at least 75% of the ground floor area of a building.

8. Ground-Floor Windows/Doors

   Long expanses of blank walls facing the street or other public area have negative impacts on the streetscape and the pedestrian environment. To minimize these effects, the standards of this section are intended to enhance street safety and provide a comfortable walking environment by providing ground-level features of interest to pedestrians in specific areas of the downtown zones.

   a. For block faces identified on Figure 19.310-5 (Ground-floor Windows and Openings), the exterior wall(s) of the building facing the street/sidewalk must meet the following standards:

      (1) 50% of the ground-floor street wall area must consist of openings; i.e., windows or glazed doors. The ground-floor street wall area is defined as the area up to the finished ceiling height of the space fronting the street or 15 ft above finished grade, whichever is less.

      (2) Doors and/or primary entrances must be located on the block faces identified on Figure 19.310-5, and must be unlocked when the business located on the premises is open. Doors/entrances to second-floor residential units may be locked.

      (3) Clear glazing is required for ground-floor windows. Nontransparent, reflective, or opaque glazing are not permitted.

      (4) Ground-floor windows for buildings on the block faces identified on Figure 19.310-5 shall allow views into storefronts, working areas, or lobbies. No more than 50% of the window area may be covered by interior furnishings including but not limited to curtains, shades, signs, or shelves. Signs are limited to a maximum coverage of 20% of the window area.

9. Drive-Through Facilities

   Drive-through facilities can conflict with the easy, safe, and convenient movement of pedestrians. Therefore, drive-through facilities are prohibited in the downtown zones to create a pedestrian-friendly environment where transit, bicycles, and walking are encouraged.

10. Off-Street Parking

    The desired character for the Downtown Storefront Zone, particularly along Main Street, is defined by a continuous façade of buildings close to the street, with adjacent on-street parking.

    a. Development in the Downtown Storefront Zone, and the portion of the Downtown Office Zone located to the north of Washington Street and east of McLoughlin Boulevard, is exempt from the maximum and minimum quantity requirements for vehicle parking in Section 19.605.

    b. With the exception of the two areas identified in Subsection 19.310.4.B.10.a above, standards and provisions of Chapter 19.600 shall apply to development in the downtown zones.

    c. Off-street surface parking lots (including curb cuts) shall not be located within 50 ft of the Main Street right-of-way. The Planning Commission may permit off-street parking lots and curb cuts within 50 ft of the Main Street right-of-way only on the finding in a public hearing that:

        (1) The overall project meets the intent of providing a continuous façade of buildings close to Main Street;

        (2) The off-street parking area or curb cut is visually screened from view from Main Street; and

        (3) The community need for the off-street parking area or curb cut within 50 ft of Main Street outweighs the need to provide a continuous façade of buildings in that area.

11. Minimum Landscaping/Open Space

    The minimum landscaping/open space requirements are established to provide amenities for downtown residents, promote livability, and help soften the effects of built and paved areas.

    a. Required landscaping/open space in the downtown zones may include courtyards, roof top gardens, balconies, terraces, and porches.

    b. Where possible, jointly improved landscaped areas are encouraged to facilitate continuity of landscape design. Street trees are required in all downtown zones as outlined in the public area requirements.

    c. All material in the minimum required landscaped area shall be live plant material. Materials such as bark or river rock may be used only if approved as part of the overall landscaping plan.

12. Right-of-Way Projections

    Right-of-way projections of up to 4 ft are permitted in all downtown zones for upper-level, unenclosed balconies. All applicable building, fire, safety and public works standards shall also be met prior to permitting such balcony projections.

**19.310.5 Public Area Requirements**

A. Purpose

The City has two adopted plans that guide the revitalization of downtown Milwaukie. The first focuses on land uses in the downtown zones entitled Milwaukie Downtown and Riverfront Land Use Framework Plan. The second focuses on public area requirements in

the downtown zones entitled Milwaukie Downtown and Riverfront Plan: Public Area Requirements. Public area requirements are defined as improvements within the public right-of-way and include, but are not limited to, sidewalks, bicycle lanes, on-street parking, curb extensions, lighting, street furniture, and landscaping. The purpose of the public area requirements plan is to ensure the development of a consistent and high-quality public right-of-way that establishes a safe, comfortable, contiguous pedestrian-oriented environment with a unified urban design.

B. Applicability

All downtown development projects that meet the applicability provisions of Section 19.702 are subject to Chapter 19.700 in its entirety, with the exception of specified portions of Section 19.708 that pertain to street requirements and design standards for non-downtown development projects. Street requirements and design standards for development projects in the downtown zones are governed by the Milwaukie Downtown and Riverfront Plan: Public Area Requirements. These requirements and standards also apply to all street sections shown in the public area requirements plan even when the development project is not in a downtown zone.

C. Review Process

All downtown development projects that meet the applicability provisions of Section 19.702 shall submit all appropriate applications per Subsection 19.703.2. For downtown development projects requiring a land use application, the applicant shall schedule a preapplication conference with the City prior to submittal of the application. Land use applications for downtown development projects shall be submitted in accordance with Subsection 19.703.2 and processed in accordance with Chapter 19.1000.

D. Street Design Standards

If the Engineering Director determines that the proposed development has impacts on the transportation system pursuant to Section 19.704, the Planning Director will identify the type, size, and location of needed improvements to the public right-of-way using the Milwaukie Downtown and Riverfront Plan: Public Area Requirements as a guide. The Engineering Director will then conduct a proportionality analysis pursuant to Section 19.705. If none of the needed improvements are determined to be proportional to the development's impacts, the proposed development will be required to comply with the City's safety and functionality standards, which are contained in Subsection 19.703.3.C. If only some of the needed improvements are determined to be proportional to the development's impacts, the Planning Director will determine which improvements the proposed development will be required to fund or construct. Appeal of the City's proportionality analysis is allowed pursuant to Subsection 19.703.5.B.

**19.310.6 Design Standards**

A. Purpose

The design standards contained in this section are intended to encourage building design and construction with durable, high-quality materials. The design standards, together with the public area requirements, will support the development of a cohesive, attractive, and safe downtown area and encourage private investment. The design standards do not prescribe a particular building or architectural style. The standards are intended to be clear and objective, and compliance with the standards is checked as part of building plan review.

B. Applicability

The design standards are applicable to all new construction and to major exterior alterations in the downtown zones. Standards regarding prohibited materials are applicable to minor exterior alterations in the downtown zones. Exterior maintenance and repair of buildings in the downtown zones are exempt from compliance with the design standards. Definitions of exterior maintenance and repair, minor exterior alteration, and major exterior alteration follow.

1. Exterior maintenance and repair includes refurbishing, painting, and weatherproofing of deteriorated materials, and in-kind restoration or replacement of damaged materials. Exterior maintenance and repair does not include replacement of materials due to obsolescence or when associated with minor or major exterior renovation, as defined below. Exterior maintenance and repair does not include the placement of signs.

   The design standards are not applicable to exterior maintenance and repair as defined above.

2. Minor exterior alterations include the exterior alterations of any portion of a structure that do not fall within the definitions of "exterior maintenance and repair" or "major exterior alterations." Minor exterior alterations include, but are not limited to, the application or installation of finish building treatments, including windows and other glazing, doors, lintels, copings, vertical and horizontal projections including awnings, and exterior sheathing and wall materials. Minor exterior alteration does not include the placement of signs.

   Additions not exceeding 250 sq ft may be permitted under a minor exterior alteration only when the additional floor area is designed and used for utility, HVAC, other mechanical equipment, ADA upgrades, or egress required by applicable fire safety or building codes.

   The design standards pertaining to prohibited exterior building materials (see Subsection 19.310.6.C below) are applicable to minor exterior alterations. No other design standards apply to minor exterior alterations.

3. Major exterior alterations include any of the following:

   a. Alterations that do not fall within the definitions of "exterior maintenance and repair" or "minor exterior alterations";

   b. Demolition or replacement of more than 25% of the surface area of any exterior wall or roof;

   c. Floor area additions that exceed 250 sq ft or do not meet the limited purposes as defined under the minor exterior alteration (ADA upgrades, etc.).

      The design standards are applicable to major exterior alterations as described below:

      (1) Major exterior alterations involving a wall(s) shall comply with the design standards for walls and the design standards for windows for that wall(s).

      (2) Major exterior alterations involving a roof shall comply with the design standards for roofs.

C. Design Standards

1. Design Standards for Residential

The following standards are applicable to "stand-alone" residential buildings in the Downtown Residential and Downtown Commercial Zones. Additional standards pertaining to walls, windows, and roofs are also applicable to residential buildings and are addressed in Subsections 19.310.6.C.2 through 4 below.

a. Residential Entries and Porches

(1) Porches, if provided, shall be a minimum of 6 ft deep by 8 ft wide.

(2) Front entries must face a public street or a landscaped courtyard.

b. Garages and Parking Areas

Garage entrances and parking areas shall not be located between the residential building(s) and the abutting public street.

c. Residential Courtyards, if Provided

(1) Courtyards shall have a minimum width of 30 ft.

(2) Up to 15% of the courtyard area may be claimed as private space. The remainder shall be common space.

(3) The courtyard shall be enclosed on a minimum of 2 sides by residential front entry doors.

(4) Garage doors shall not front onto the courtyard.

d. Residential Balconies

Balconies for residential units shall have a minimum depth of 6 ft and minimum width of 8 ft.

2. Design Standards for Walls

The following standards are applicable to the exterior walls of buildings facing streets, courtyards, and/or public squares in all of the downtown zones.

a. Exterior wall-mounted mechanical equipment is prohibited.

b. The following wall materials are prohibited at the street level of the building:

(1) EIFS or other synthetic stucco panels;

(2) Splitface or other masonry block.

c. The following wall materials are prohibited at all levels of the building in all downtown zones:

(1) Plywood paneling;

(2) Brick with dimensions larger than 4 by 8 by 2 in;

(3) Spandrel glazing/curtain wall;

(4) Vinyl or metal cladding;

(5) Composite wood fiberboard or composite cement-based siding, except as permitted in the Downtown Residential Zone in Subsection 19.310.6.C.2.d.(3);

(6) Metal panels, except at penthouse level.

d. The following wall materials are permitted only in the Downtown Residential Zone where densities are less than 30 units per acre:

(1) Board and batten cladding (limited to a maximum of 20% of the wall area);

(2) Wood shingles;

(3) Composite wood fiberboard or composite cement-based siding.

3. Design Standards for Windows

The following standards are applicable to building windows facing streets, courtyards, and/or public squares in all of the downtown zones.

a. Windows shall be "punched" openings recessed a minimum of 2 in from the wall surface.

b. Window height shall be equal to or greater than window width.

c. The following windows are prohibited:

(1) Reflective, tinted, or opaque glazing;

(2) Simulated divisions (internal or applied synthetic materials);

(3) Exposed, unpainted metal frame windows.

4. Design Standards for Roofs

The following standards are applicable to building roofs in all of the downtown zones.

a. Flat roofs shall include a cornice with no less than 6 in depth (relief) and a height of no less than 12 in.

b. Mansard or decorative roofs on buildings less than 3 stories are prohibited in all downtown zones.

c. Metal roofs are prohibited only in the Downtown Residential Zone.

## 19.311 NEIGHBORHOOD COMMERCIAL ZONE C-N

In a C-N Zone the following regulations shall apply:

### 19.311.1 Uses Permitted Outright

In a C-N Zone the following uses and their accessory uses are permitted outright:

A. No uses permitted outright.

### 19.311.2 Conditional Uses Permitted

In a C-N Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

A. A food store not exceeding 2,500 sq ft of floor area;

B. A store providing convenience goods and services for a local area;

C. Laundry;

D. Eating establishment;

E. Any other use similar to the above and not listed elsewhere.

### 19.311.3 Standards

In a C-N Zone the following standards shall apply:

A. Lot size. Lot area shall be at least 5,000 sq ft but not greater than 25,000 sq ft. Lot width shall be at least 50 ft. Average lot depth shall be at least 80 ft.

B. Front yard. A front yard shall be at least 15 ft.

C. Side yard. A side yard shall be at least 5 ft, and there shall be additional 1 ft of side yard for each 3 ft of height over 2 stories or 25 ft, whichever is less, except on corner lots a side yard shall be at least 15 ft on the side abutting the street.

D. Rear yard. A rear yard shall be at least 10 ft.

E. Off-street parking and loading. As specified in Chapter 19.600.

F. Height restriction. Maximum height of a structure shall be 2.5 stories or 35 ft, whichever is less.

G. Lot coverage. Maximum area that may be covered by the dwelling structure and accessory buildings shall not exceed 40% of the total area of the lot.

H. Minimum vegetation. Minimum area that must be left or planted in trees, grass, shrubs, etc., shall be 20% of the total area of the lot.

I. Screening. Neighborhood commercial uses must be screened from adjacent residential uses.

J. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 ft.

K. Transportation requirements and standards. As specified in Chapter 19.700.

### 19.311.4 Prohibited Uses

The following uses and their accessory uses are prohibited:

A. Adult entertainment business.

## 19.312 LIMITED COMMERCIAL ZONE C-L

In a C-L Zone the following regulations shall apply:

### 19.312.1 Uses Permitted Outright

In a C-L Zone the following uses and their accessory uses are permitted outright:

A. Offices, studios, or clinics of accountants, architects, artists, attorneys, authors, writers, dentists, designers, engineers, investment counselors, landscape architects, management consultants, physicians, surgeons, psychologists, and others of a professional nature.

B. Offices of administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, scientific, or statistical organizations.

C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory.

D. Personal service business such as a barber shop, tailor shop, or laundry and dry cleaning pickup station.

E. Any other use similar to the above and not listed elsewhere.

### 19.312.2 Conditional Uses Permitted

In a C-L Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

A. Funeral home;

B. Marina and boat sales;

C. Parking facility;

D. Repair, maintenance, or service of the type of goods to be found in any permitted retail trade establishment;

E. Financial institution;

F. Trade or commercial school;

G. Single-family detached dwelling;

H. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock;

I. Single-family attached dwelling, multifamily apartment, and condominium dwelling;

J. Senior and retirement housing;

K. Residential home;

L. Congregate housing facility;

M. High-impact commercial, except adult entertainment businesses;

N. Any other use similar to the above and not listed elsewhere.

### 19.312.3 Standards

In a C-L Zone the following standards shall apply:

A. Lot size. None, except as follows for dwelling. Lot area shall be at least 5,000 sq ft. Lot area for the first dwelling unit shall be at least 5,000 sq ft and for dwelling units over 1 there shall be not less than an average of 1,000 sq ft. Lot width shall be at least 50 ft. Lot width for interior single-family attached and condominium units shall be at least 30 ft. Lot depth shall be at least 80 ft.

B. Front yard. None, except as provided in Subsections19.312.3.E and 19.501.2.A.

C. Side yard. None, except as provided in Subsections19.312.3.E and 19.501.2.A.

D. Rear yard. None, except as provided in Subsections19.312.3.E and 19.501.2.A.

E. Transition area. A transition area shall be maintained according to Subsection 19.504.6.

F. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 ft except as permitted under the Land Division Ordinance. Lots for interior single-family attached and condominium units shall abut a public street for at least 20 ft.

G. Off-street parking and loading. As specified in Chapter 19.600.

H. Height restriction. Maximum height of any structure shall be 3 stories or 45 ft, whichever is less.

I. Open use. A use not contained within an enclosed building, such as open storage, abutting or facing a residential zone, shall be screened with a sight-obscuring fence not less than 6 ft high.

J. Minimum vegetation. Minimum area that must be left or planted in trees, grass, shrubs, barkdust for planting beds, etc., shall be 15% of the total area of the lot.

K. Transportation requirements and standards. As specified in Chapter 19.700.

**19.312.4 Prohibited Uses**

The following uses and their accessory uses are prohibited:

A. Adult entertainment businesses.

## 19.313 GENERAL COMMERCIAL ZONE C-G

In a C-G Zone the following regulations shall apply:

### 19.313.1 Uses Permitted Outright

In a C-G Zone the following uses and their accessory uses are permitted outright:

A. Offices, studios, or clinics of accountants, architects, artists, attorneys, authors, writers, dentists, designers, engineers, investment counselors, landscape architects, management consultants, physicians, surgeons, psychologists, and others of a professional nature;

B. Offices of administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, scientific or statistical organizations;

C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory;

D. Personal service business such as a barber shop, tailor shop or laundry, and dry cleaning pickup station;

E. A use permitted outright in this zone with drive-in service facilities;

F. Funeral home;

G. Eating establishment;

H. Marina;

I. Parking facility;

J. Repair, maintenance, or service of the type of goods to be found in any permitted retail trade establishment;

K. Financial institution;

L. Trade or commercial school;

M. Department or furniture store;

N. Automobile, boat, trailer, or other vehicle or equipment sales and service;

O. Car wash;

P. Carpenter or cabinet shop;

Q. Furniture upholstering;

R. Building materials supply;

S. Plumbing, heating, ventilation, or electrical shop;

T. Printing plant;

U. Repair garage;

V. Automobile service station;

W. Sign painting shop;

X. Tire shop;

Y. Any other use similar to the above and not listed elsewhere.

### 19.313.2 Conditional Uses Permitted

In a C-G Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

A. Animal hospital or boarding kennel;

B. Auditorium or stadium;

C. Contractor's storage yard;

D. Sheet metal shop;

E. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock;

F. Drinking establishment;

G. High-impact commercial, except adult entertainment businesses;

H. Any other use similar to the above and not listed elsewhere.

### 19.313.3 Standards

In a C-G Zone the following standards shall apply:

A. Lot size. None. Lot width shall be at least 50 ft. Average lot depth shall be at least 80 ft.

B. Front yard. None, except as provided in Subsections 19.313.3.E and 19.501.2.A.

C. Side yard. None, except as provided in Subsections 19.313.3.E and 19.501.2.A.

D. Rear yard. None, except as provided in Subsections 19.313.3.E and 19.501.2.A.

E. Transition area. A transition area shall be maintained according to Subsection 19.504.6.

F. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 ft.

G. Off-street parking and loading. As specified in Chapter 19.600.

H. Height restriction. Maximum height of a structure shall be 3 stories or 45 ft, whichever is less.

I. Lot coverage. Maximum area that may be covered by buildings and structures shall not exceed 85% of the total area of the lot.

J. Open use. A use not contained within an enclosed building, such as open storage, abutting or facing a residential zone, or which would be visible from a public street, shall be screened with a sight-obscuring fence not less than 6 ft high.

   Except for open storage, the following uses shall be conducted within an enclosed building:

   1. Carpenter or cabinet shop;
   2. Furniture upholstering;
   3. Plumbing shop;
   4. Repair garage;
   5. Sign painting shop;
   6. Tire shop;

7. Heating or ventilation shop.

K. Minimum vegetation. Minimum area that must be left or planted in trees, grass, shrubs, bark dust for planting beds, etc., shall be 15% of the total area of the lot.

L. Transportation requirements and standards. As specified in Chapter 19.700.

**19.313.4 Prohibited Uses**

The following uses and their accessory uses are prohibited:

A. Adult entertainment business.

## 19.314 COMMUNITY SHOPPING COMMERCIAL ZONE C-CS

In a C-CS Zone the following regulations shall apply:

### 19.314.1 Uses

Development shall be a community-scale shopping center.

A. Such center shall include at least 3 out of the 4 following uses:
   1. Department store uses;
   2. Drug and/or variety store uses;
   3. Food supermarket;
   4. Retail specialty shops.

B. Such center may include the following additional uses:
   1. Eating and drinking establishment;
   2. Financial institution;
   3. Entertainment use (theater, etc.);
   4. Personal service businesses;
   5. Repair, service or maintenance of goods authorized in this district;
   6. Offices, clinics, or trade schools, provided no more than 15% of the total floor space of the center is devoted to such uses;
   7. Any other uses determined by the Planning Commission to be similar and compatible to the above-listed uses.

C. Uses prohibited shall be: industrial, warehousing, vehicular sales or service, motels, adult entertainment business, machinery sales or repair, contractor's office, and similar uses as determined by the Planning Commission.

### 19.314.2 Scale

The minimum size of the community-scale shopping center shall be 200,000 gross leasable sq ft. Construction of the center may be phased, however, and the first phase must be at least 140,000 sq ft. If construction is phased, all phases must be completed in 3 years.

### 19.314.3 Application Review; Minimum Requirements

A. Site development plan showing site and adjacent streets, access, parking, circulation, landscaped areas, location of buildings, location of pedestrian walkways, location of utilities, service areas, loading areas, lighting, utilities and public facilities;

B. Landscaping plan showing size, species and location of plant materials, irrigation system, site contouring;

C. Preliminary architectural plans indicating floor plans, elevations, building orientation and signing;

D. Phasing plan, if proposed;

E. Detailed traffic report, analyzing existing traffic, traffic generation, turning movements, and impact on adjacent streets. Report shall recommend roadway improvements needed to

mitigate impacts as specified in Chapter 19.700. The application shall be reviewed under Type III review procedures as provided in Section 19.1006;

F. Proposed on and off-site improvements to the remaining public facilities (water, sanitary sewer and storm sewer).

**19.314.4 Criteria for Approval**

An application for development will be approved if it meets the following criteria:

A. It complies with the application requirements under Subsection 19.314.3 above;

B. It meets the scale requirements of Subsection 19.314.2 above;

C. It meets the use requirements of Subsection 19.314.1 above;

D. It meets the development standards of Subsection 19.314.5 below;

E. The site plan and building orientation/design shall address the following guidelines:

1. Create an aesthetically pleasing development by the use of quality materials and the arrangement of buildings, landscaping and parking,
2. Relate functionally to the site, surroundings and internally,
3. Be designed to maximize safety and convenience, for the motorist and pedestrian,
4. Be designed to consider crime prevention techniques,
5. Signs shall be integrated into the design of the center.

**19.314.5 Development Standards**

A. Setbacks (Minimum) from Property Line

1. Along Hwy. 224: 30 ft
2. Along Oak Street: 40 ft
3. Along 37th Street: 20 ft
4. From other property lines: 5 ft

B. Heights (maximum)

3 stories or 45 ft, whichever is less.

C. Access

1. Maximum of 2 curb cuts along Oak St. frontage.
2. Maximum of 3 curb cuts along 37th St. frontage.
3. Location of access points to be approved by the Public Works Director, after consultation with the State Highway Division.

D. Landscaping

1. A minimum of 20% of the net site area shall be landscaped. Net site area is gross site area minus right-of-way (ROW) dedications.
2. All setback areas to be landscaped.
3. A landscaped berm on the Hwy. 224 and Oak St. frontages shall be installed. The berm shall be designed to provide visual relief from the parking and activity areas of the center. The berm may be "tapered" down on either side of access drives.

4. An irrigation system shall be installed for the landscaped areas.
5. Trees (minimum 6 ft high at time of planting) shall be planted, at least 1 every 50 ft, along the bermed landscaped areas adjacent to streets.
6. "Landscaped" means a combination of ground cover, shrubbery, and trees installed to form a unified landscape.
7. A bond or financial guarantee of performance will be required.

E. Utilities

All utilities (electric, gas, telephone) shall be installed underground.

F. Transit

Reserve areas for transit facilities (bus turnout, shelter, benches, station, etc.) for the use of mass transit if requested by TriMet in their review of the project as specified in Chapter 19.700.

G. Public Facilities

All necessary public facilities (water, sanitary sewer, storm sewer, streets) must be improved to meet City and State standards.

H. Parking requirements of Chapter 19.600.

I. Design Standards

1. Roof-mounted mechanical equipment shall be screened from view.
2. Loading and delivery areas should be separated from parking and pedestrian areas.
3. A minimum of 80% of the floor space shall be designed as an enclosed mall (where access from one store to another is possible without walking outside). Alternatively, a pedestrian walkway covering is permitted, if designed to shelter pedestrians from inclement weather.
4. Outdoor trash or delivery areas are screened from the public's view

J. Transportation Requirements and Standards

As specified in Chapter 19.700.

## 19.315 MANUFACTURING ZONE M

Statement of Purpose. The purpose of this manufacturing zone is to promote clean, employee-intensive industries which may also include related accessory uses, such as commercial and office uses, which serve the industrial area.

### 19.315.1 Permitted Uses

Permitted uses are limited to industrial uses meeting the following criteria:

A. Any combination of manufacturing, office, and/or commercial uses are allowed when at least 25% of the total project involves an industrial use as described under Subsection 19.315.1.B. The combined uses shall provide at least 10 employees per net acre.

B. A use which involves the collection and assembly of durable goods, warehousing of goods, transshipment of goods from other sources, and/or the assembly of goods from products which have been processed elsewhere, general manufacturing, and production.

C. Commercial and office uses which are accessory to the industrial use(s). Such uses may include gymnasium, health club, secretarial services, sandwich deli, small restaurant, and retail/wholesale commercial use and showroom.

D. May produce small amounts of noise, dust, vibration, or glare, but may not produce off-site impacts that create a nuisance, as defined by DEQ or the City Noise Ordinance.

E. Has access to a collector or arterial street.

F. A permitted use may require outside storage areas. These storage areas shall be screened with a sight-obscuring fence or dense plantings from any adjoining residential uses or public streets.

G. Warehouse use which is accessory to an industrial use.

### 19.315.2 Preexisting Uses and Developments

Notwithstanding the provisions of Chapter 19.800 Nonconforming Uses and Development, prohibited uses and structures located in any mapped "employment" or "industrial" area, as shown on the Milwaukie Comprehensive Plan Title 4 Lands Map, that were lawfully in existence prior to May 6, 1999, and would be impacted by amendments prohibiting retail uses in excess of 60,000 sq ft, are considered to be approved uses and structures for the purposes of this section. If such a preexisting use or development is damaged or destroyed by fire, earthquake, or other natural force, then the use will retain its preexisting status under this provision, so long as it is substantially reestablished within 3 years of the date of the loss.

Notwithstanding the provisions of Chapter 19.800 Nonconforming Uses and Development, prohibited uses and structures located in any mapped "industrial" area, as shown on the Milwaukie Comprehensive Plan Title 4 Lands Map, that were lawfully in existence prior to March 17, 2009, may continue and expand to add up to 20% more floor area and 10% more land area than exists on the above-stated date. This expansion requires a conditional use review.

### 19.315.3 Prohibited Uses

A. Any use which has a primary function of storing, utilizing, or manufacturing explosive materials or other hazardous material as defined by the Uniform Fire Code, Article 80;

B. New residential construction, churches, public schools;

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

D. All lots included in mapped "Industrial" areas, as shown on Milwaukie Comprehensive Plan Title 4 Lands Map, April 6, 1999, carry the following additional restrictions:

1. Individual retail trade uses greater than 5,000 sq ft gross floor area per building or business are prohibited.
2. Multiple retail trade uses that occupy more than 20,000 sq ft gross floor area are prohibited, whether in a single building or in multiple buildings within the same project.
3. Facilities whose primary purpose is to provide training to meet industrial needs are exempted from this prohibition.

**19.315.4 Conditional Uses**

A. Natural Resource Extraction

1. Open pit and gravel excavating or processing shall not be permitted nearer than 50 ft to the boundary of an adjoining property line, unless written consent of the owner of such property is first obtained. Excavating or processing shall not be permitted closer than 30 ft to the right-of-way line of an existing platted street or an existing public utility right-of-way.
2. An open pit or sand and gravel operation shall be enclosed by a fence suitable to prevent unauthorized access.
3. A rock crusher, washer, or sorter shall not be located nearer than 500 ft to a residential or commercial zone. Surface mining equipment and necessary access roads shall be constructed, maintained, and operated in such a manner as to eliminate, as far as is practicable, noise, vibration, or dust which is injurious or substantially annoying to persons living in the vicinity.

B. High-Impact Commercial Uses

When considering a high-impact commercial use, the Commission shall consider the following:

1. Nearness to dwellings, churches, hospitals, or other uses which require a quiet environment;
2. Building entrances, lighting, exterior signs, and other features which could generate or be conducive to noise or other disturbance for adjoining uses;
3. Parking vehicles and pedestrian access and circulation could contribute to noise or attract habitual assembly or unruly persons;
4. Hours of operation;
5. In addition to consideration of the above with respect to building and site design, the Planning Commission may attach conditions or standards of performance and impact, and methods for monitoring and evaluating these, to ensure that such establishments do not become unduly or unnecessarily disruptive.

   In addition, when considering an adult entertainment business, the following criteria shall be used: The proposed location of an adult entertainment business shall not be within 500 ft of an existing or previously approved adult entertainment business or within 500 ft of either a public park, a church, a day-care center, a primary, elementary,

junior high, or high school, or any residentially zoned property, both of which distances shall be measured in a straight line, without regard to intervening structures, between the closest structural wall of the adult entertainment business and either the closest property line of the impacted property or the closest structural wall of any pre-existing or previously approved adult entertainment business.

### 19.315.5 Site Development Requirements

A. Setbacks

Front: 20 ft

Side: None*

Corner side yard: 10 ft

Rear: None*

* Except when abutting a residential district, in which case the setback shall match the abutting property.

B. Height. 45 ft

C. Parking and loading. See Chapter 19.600.

D. Landscaping

15% landscaping of the site is required. A variety of trees, shrubbery, and ground cover is encouraged. Street trees are required along street frontages and within parking lots to help delineate entrances, provide shade, and permeable areas for storm water runoff. A bond or a financial guarantee of performance will be required.

E. Site access. 1 curb cut (45 ft maximum) per 150 ft of street frontage.

F. Transition Area

Industrial development adjacent to and within 120 ft of areas zoned for residential uses is subject to Type I or II review per Section 19.906 Development Review. The following characteristics will be considered:

1. Noise
2. Lighting
3. Hours of operation
4. Delivery and shipping
5. Height of structure
6. Distance to residential zone boundary

The review authority may attach conditions to reduce any potentially adverse impacts to residential properties.

G. Transportation requirements and standards. As specified in Chapter 19.700.

## 19.316 BUSINESS INDUSTRIAL ZONE BI

### 19.316.1 Purpose

This section is adopted to implement the policies of the Comprehensive Plan for industrial land uses providing a mix of clean, employee-intensive, industrial and office uses, with associated services, in locations supportive of mass transit and the regional transportation network.

### 19.316.2 Uses Permitted Outright

A. The following business and industrial uses are allowed outright, subject to the standards of Subsection 19.316.6.

1. Experimental, research, film, or testing laboratories, provided no operation shall be conducted or equipment used which would create hazards and/or nuisances off the site;
2. Manufacturing, processing, fabrication, packaging, or assembly of products from previously prepared materials;
3. Printing, publishing, bookbinding, graphic or photographic reproduction, blueprinting or photo processing;
4. Trade schools primarily serving the business community within the area.

B. Business and professional offices, including product design, sales, service, packaging; corporate headquarters or regional offices.

C. Warehousing and distribution.

D. Any other use similar to the above uses but not listed elsewhere.

### 19.316.3 Accessory Uses

A. Uses accessory to and in conjunction with uses permitted outright may include the following:

1. Employee lounges and dining rooms, employee day-care facilities, conference rooms for tenant use, newsstands, central mail room and self-service postal and banking facilities, and product information and display areas;
2. Executive, administrative, design, or product showroom offices provided in conjunction with uses listed under Subsection 19.316.2 of this section;
3. Indoor and outdoor recreational facilities, such as swimming pools, saunas, game and craft rooms, exercise and dance studios, community meeting rooms, lounges, playgrounds, tennis and other courts, bike and walking trails, and pedestrian plazas and courts, which are provided in association with uses listed in Subsection 19.316.2 of this section;
4. Rental and development information offices, handyman and maintenance services, and other business offices and services in association with allowed uses in the development;
5. Recycling center, provided that any storage of materials shall be adequately screened;
6. Accessory uses and structures not otherwise prohibited which are customarily accessory and incidental to any use permitted outright or limited use;
7. Temporary buildings for uses incidental to construction work, which buildings shall be removed upon the completion or abandonment of the construction work;

8. Retail outlets associated with manufacturing uses as outlined in Subsection 19.316.2.A.2 of this section. Products sold at the accessory retail outlet shall be primarily those assembled or manufactured onsite. The accessory retail outlet shall be located within the associated manufacturing building and occupy up to a maximum of 25% of the floor area of the associated manufacturing building or 4,000 sq ft, whichever is less.

**19.316.4 Limited Uses**

A. Limited retail or service uses may be allowed that primarily service the needs of BI Zone clients, employees, and businesses, as opposed to the general public. These uses, subject to the provisions of Subsection 19.316.4.B below, shall include:

1. A restaurant or deli, offering at least breakfast and/or lunch items, without a drive-in or drive-through service;
2. Office supply and equipment, sales, or service;
3. Personal service businesses such as a barber, beauty parlor, tailor, dressmaking, shoe repair shop, self-service laundry, dry cleaning, photographer, instruction studios, or similar uses;
4. A bank or other financial institution;
5. A computer or other similar small electronic office machines store, sales and service; and
6. Any other use similar and compatible to the above-listed uses.

B. Limitations and conditions on the development of the limited uses itemized above shall be as follows:

1. All limited uses shall be located, arranged, and integrated within the district to serve primarily the shopping and service needs of clients, businesses, and employees of the district;
2. Limited uses may occupy up to a maximum of 25% of the square footage of a building. A limited use that is to be located in a building and exceeds 25% of the building's square footage shall be reviewed as a conditional use;
3. Maximum floor area for a limited use shall be 4,000 sq ft;
4. All limited uses shall comply with the standards under Subsection 19.316.6.

**19.316.5 Conditional Uses**

A. Conditional uses may be established in a business industrial district subject to review and action on the specific proposal, pursuant to Section 19.905 Conditional Uses. Approval shall not be granted unless the proposal satisfies the criteria in Section 19.905; and, in addition, the proposed use:

1. Will have minimal adverse impact on the appropriate development of uses permitted outright on abutting properties and the surrounding area considering location, size, design, and operating characteristics of the use;
2. Is compatible with the character and scale of uses allowed within the district and on a site no larger than necessary for the use and operational requirements of the use;
3. Will provide vehicular and pedestrian access, circulation, parking, and loading areas which are compatible with uses on the same site or adjacent sites; and

4. Is a needed service/product in the district, considering the mix of potential clientele and the need to maintain high-quality development in a highly visible area.

B. Uses allowed subject to the above conditions are:

1. Public and private community buildings, indoor and outdoor recreational facilities, such as swimming pools, racquetball clubs, athletic clubs, health and exercise spas, gymnasiums, tennis courts, playground, and other similar uses, developed to serve primarily the recreational needs of clients and employees of the district;
2. Mini-warehousing, mini-storage, public storage, and similar commercial facilities that lease storage space to the general public;
3. A limited use or uses that exceed 25% of the building's square footage as per Subsection 19.316.4.B.2 above.

**19.316.6 Standards**

In the BI district, the following standards shall apply to all uses:

A. Lot size. None, except that lots created shall be of a size sufficient to fulfill the applicable standards of this district.

B. Front yard. A front yard shall be at least 20 ft unless additional setback is required in Subsection 19.501.2.A.

C. Side yard. No side yard shall be required except on corner lots where a side yard shall be at least 10 ft on the side abutting the street, unless additional setback is required in Subsection 19.501.2.A.

D. Rear yard. No rear yard shall be required except as provided in Subsection 19.501.2.A

E. Off-street parking and loading. As specified in Chapter 19.600.

F. Site Access

One curb cut (45 ft maximum) per 150 ft of street frontage, or fraction thereof, for industrial uses; and 1 curb cut per 100 ft of street frontage or fraction thereof, for business park, limited or conditional uses.

G. Height restriction. Maximum height of a structure shall be 3 stories or 45 ft, whichever is less.

H. Landscaping

15% of the site must be landscaped, except for sites adjacent to Hwy. 224, which shall provide landscaping to 20% of the site. This should consist of a variety of lawn, trees, shrubbery, and ground cover. Street trees must be provided along street frontages and within required off-street parking lots to help delineate entrances, provide shade, and permeable areas for stormwater runoff. A bond or financial guarantee for landscape completion shall be required.

I. Screening and Outside Storage

Outside storage adjacent to International Way, Freeman Way, 37th Ave., Lake Road, or Hwy. 224 is prohibited. Outside storage in side or rear yards is allowed, provided it is enclosed by a sight-obscuring fence or vegetative screen.

J. Building Siting and Design

Buildings and sites shall be designed using the following principles:

1. Sites shall be developed to the maximum extent practicable, so that buildings have solar access and utilize other natural features in their design.
2. Assure that building placement and orientation and landscaping allow ease of security surveillance.
3. Design buildings with shapes, colors, materials, textures, lines, and other architectural design features which enhance the character of the district and complement the surrounding area and development, considering, but not limited to, the following techniques:
   a. Use color, materials, and architectural design to visually reduce the scale and impact of large buildings;
   b. Use building materials and features that are durable and consistent with the proposed use of the building, level of exposure to public view, and exposure to natural elements.
4. To the extent possible, screen or mask roof-mounted mechanical equipment, except solar collection apparatus, from view.
5. Orient major service activity areas (e.g., loading, delivery, and garbage collection, etc.) of the development away from major streets.
6. Arrange use and buildings to maximize opportunities for shared circulation, access, parking, loading, pedestrian walkways and plazas, recreation areas, and transit-related facilities.
7. Provisions for bus shelters, bike racks, street furniture, kiosks, drinking fountains, art sculptures, and/or other pedestrian and transit amenities as required by Chapter 19.700.

K. Nuisances

The use shall not be of a type or intensity which produces dust, odor, smoke, fumes, noise, glare, heat, or vibrations which are incompatible with other uses allowed in this zone; and the use does not produce off-site impacts that create nuisance as defined by the Oregon D.E.Q. and the City Noise Ordinance.

**19.316.7 Validity of Uses**

In the BI Zone, uses that are subject to the provisions of this zone and were legally established/occupied on or prior to the effective date of the zone, shall be considered as legally approved permitted, limited, or conditional uses as described by the BI Zone.

## 19.317 PLANNED DEVELOPMENT ZONE PD

In a Planned Development Zone the following regulations shall apply:

### 19.317.1 Purpose

The purpose of a PD Planned Development Zone is:

A. To provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements;

B. To encourage greater flexibility of design and the application of new techniques in land development;

C. To provide a more efficient, aesthetic, and desirable use of public and private common open space;

D. To promote variety in the physical development pattern of the City; and

E. To encourage a mix of housing types and to allow a mix of residential and other land uses.

### 19.317.2 Use

A planned development approved by the City Council and based on a final development plan and program shall constitute the Planned Development Zone. The PD Zone is a superimposed zone applied in combination with regular existing zones. A PD Zone shall be comprised of such combinations of types of dwellings and other structures and uses as shall be authorized by the Council, but the Council shall authorize only those types of dwellings and other structures and uses as will:

A. Conform to the City's Comprehensive Plan;

B. Form a compatible and harmonious group;

C. Be suited to the capacity of existing and proposed community utilities and facilities;

D. Be cohesively designed and consistent with the protection of public health, safety, and welfare in general; and

E. Afford reasonable protection to the permissible uses of properties surrounding the site. In addition to residences and their accessory uses, the Council may authorize commercial and nonresidential uses which it finds to be:

   1. Designed to serve primarily the residents of the planned development,

   2. Limited to those nonresidential uses which do not exist in the vicinity, and

   3. Fully compatible with, and incorporated into, the design of the planned development.

### 19.317.3 Development Standards

All standards and requirements of this chapter and other City ordinances shall apply in a PD Zone unless the Planning Commission grants a variance from said standards in its approval of the PD Zone or accompanying subdivision plat.

A. Minimum Size of a PD Zone

   A PD Zone may be established only on land which is suitable for the proposed development and of sufficient size to be planned and developed in a manner consistent with the purposes of this zone. A PD Zone shall not be established on less than 2 acres of contiguous land unless the Planning Commission finds that a smaller site is suitable

because of unique character, topography, landscaping features, or constitutes an isolated problem area.

B. Special Improvements

In its approval of the final plan or subdivision plat within a PD Zone, the City may require the developer to provide special or oversize sewer lines, water lines, roads and streets, or other service facilities. Such approval shall not obligate the City to expend funds for additional construction equipment or for special road, sewer, lighting, water, fire, or police service.

C. Density Increase and Control

The Council may permit residential densities which exceed those of the underlying zone, if it determines that the planned development is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning. In no case shall such density increase be more than 20% greater than the density range prescribed for the primary land use designation indicated in the Comprehensive Plan.

D. Peripheral Yards

Along the periphery of any PD Zone, additional yard depth, buffering, or screening may be required. Peripheral yards shall be at least as deep as that required by the front yard regulations of underlying zones. Open space may serve as peripheral yard and/or buffer strips to separate one planned area from another, if such dual use of the land is deemed to comply with this section.

E. Open Space

Open space means the land area to be set aside and used for scenic, landscaping, or open recreational purposes within the development. Open space may also include areas which, because of topographic or other conditions, are deemed by the Council to be suitable for leaving in a natural condition. Open space shall be adequate for the recreational and leisure needs of the occupants of the development, and shall include the preservation of areas designated by the City for open space or scenic preservation in the Comprehensive Plan or other plans adopted by the City.

The development plan and program shall provide for the landscaping and/or preservation of the natural features of the land. To ensure that open space will be permanent, deeds or dedication of easements of development rights to the City may be required. Instruments and documents guaranteeing the maintenance of open space shall be approved as to form by the City Attorney. Failure to maintain open space or any other property in a manner specified in the development plan and program shall empower the City to enter said property in order to bring it up to specified standards. In order to recover such maintenance costs, the City may, at its option, assess the real property and improvements within the planned development.

All planned unit developments will have at least one-third of the gross area devoted to open space and/or outdoor recreational areas. At least half of the required open space and/or recreational areas will be of the same general character as the area containing dwelling units. Open space and/or recreational areas do not include public or private streets.

### 19.317.4 Subject to Design Review

Any development within a PD Zone shall be subject to the provisions of design review as outlined in a separate ordinance.

**19.317.5 Preliminary Development Plan and Program.**

A. Applicant

For the purpose of this section, "owner" or "owner-applicant" means and includes any individual(s), partnership(s), corporation(s), public body(ies), legal entity(ies), or holder(s) of a written option to purchase said property. An owner of land located outside, but contiguous to, the City may submit a preliminary development plan for consideration by the City providing that an application for annexation to the City has been filed.

B. A preliminary development plan and program shall be submitted by the applicant with information as required by resolution of the Planning Commission.

**19.317.6 Planning Commission Review of Preliminary Development Plan and Program**

A. Conditional approval by Planning Commission

Following the meeting, or any continuance thereof, the Planning Commission shall notify the applicant whether, in its opinion, the provisions of this chapter have been satisfied, or advise of any deficiencies.

B. Upon approval in principle of the preliminary development plan and program by the Planning Commission, with or without modifications, the owner-applicant shall, within 6 months, file with the City a final development plan and program and an application for a change of zone classification.

**19.317.7 Final Development Plan and Program**

The final development plan and program shall contain information as required by resolution of the Planning Commission.

**19.317.8 Subdivision Plat**

A. If the planned development will involve the subdivision of land as defined in City land division regulations, the owner-applicant shall prepare and submit a preliminary subdivision plat along with information required by said ordinance to be considered at the same time as the final development plan and program.

B. The final subdivision plat shall be submitted within 1 year subsequent to approval of the planned development zone by Council.

**19.317.9 Application for Zone Change**

Together with submittal of the final plan and development program, the owner-applicant shall submit an application for a zone change to apply the PD Zone to the subject property.

**19.317.10 Planning Commission Action on Final Development Plan and Program**

A. Upon receipt of the final development plan and program, zone change application, and preliminary subdivision plat, where applicable, notice shall be given and the Planning Commission shall hold a public hearing per Section 19.1007 Type IV Review. If the final development plan and program is found to be in compliance with previous approval and with the intent and requirements of this title, it shall recommend the same, together with appropriate documents and conditions, to the City Council for adoption.

B. It shall at the same time recommend the change to PD Zone in accordance with the provisions of Section 19.902. The approved final development plan and program shall be the basis upon which the change in zone is made. It shall at the same time approve the preliminary subdivision plat in accordance with the Milwaukie land division Regulations.

C. If the land upon which the change to PD Zone is sought is not within the boundaries of the City, the Planning Commission may approve the zone change and recommend it to the City Council to become effective when the land becomes annexed to the City; or continue the public hearing for the purpose of suitably amending the proposal; or disapprove the proposed developments and abandon hearings and proceedings thereon.

**19.317.11 Council Action on Final Development Plan and Program**

A. Upon receipt of Planning Commission recommendations as set forth above, the final development plan and program and zone change application shall be considered by the City Council per Section 19.1007 Type IV Review.

B. Following the consideration, the Council may adopt an ordinance applying the PD Zone to the subject property and, in so doing, shall adopt the approved final development plan and program as the standards and requirements for said zone. Council, by said ordinance, shall also accept or reject all or part of the dedications of public facilities, land, and open space.

C. If the proposed PD Zone is contiguous to, but not within, the City boundaries, the City Council shall delay final action until the land is officially annexed to the City.

D. The Council may also continue consideration and refer the matter back to the Planning Commission with recommendations for amendment thereof, or reject the proposals and abandon further hearings and proceedings thereon.

**19.317.12 Filing of Approved Final Plan and Program**

Following action to amend the Zoning Ordinance and prior to its effective date, the owner-applicant shall file with the City a conformed and approved final development plan and program, together with all pertinent documents approved as to form by the City Attorney.

**19.317.13 Recording of Notice of Final Development Plan**

Each owner of property so rezoned shall execute a notice prepared by the City which acknowledges that the final development plan and program approved by the City Council constitutes zoning for the property. Such notice shall contain a legal description of the property and reference to the certified copy of the final development plan and program filed in the office of the City Recorder. Said notices shall be recorded in the office of the County Recorder of Clackamas County.

**19.317.14 Development Improvement Prohibited Pending Compliance**

No excavation, grading, construction, improvement, or building shall begin, and no permits therefor shall be issued, within the PD Zone until all provisions of this article including execution and filing of required documents, all requirements of the City Land Division Ordinance and Building Code, and all requirements of the final development plan and program have been complied with, unless approved by the Planning Commission.

**19.317.15 Variations from Final Development Plan and Program**

A. Proposed changes which do not meet these criteria shall be processed in the same manner as for a new planned development.

B. The development may vary from the approved final plan and program so long as it is consistent with any subsequent subdivision plat approved by the Planning Commission and does not alter total density, ratio of dwelling unit types, boundaries of the planned development, or location or area of public spaces.

C. Where changes in a subdivision plat are not required, an application for approval of variations to the recorded final plan and program may be submitted in writing. Such

variations may be approved by the City staff provided they do not alter dwelling unit densities, alter dwelling unit type ratios, increase or change the type or location of commercial or residential structures, change the boundaries of the planned development, or change the location and area of public open spaces and recreational areas.

### 19.317.16 Expiration of Planned Development Zone

If, within 6 months of its effective date, substantial construction or development in the PD Zone has not occurred in compliance with the approved final development plan and program and schedule for stage completion, the Planning Commission may initiate a review of the PD Zone and hold a public hearing to determine whether its continuation in whole or in part is in the public interest. Notification and hearing shall be in accordance with Section 19.1007 Type IV Review. If found not to be, the Planning Commission shall recommend to the City Council that the PD Zone be removed by appropriate amendment to the Zoning Ordinance and property changed back to original zoning.

# CHAPTER 19.400

# OVERLAY ZONES

SECTIONS:

19.401 Willamette Greenway Zone WG
19.402 Water Quality Resource Regulations
19.403 Historic Preservation Overlay Zone HP
19.404 Mixed Use Overlay Zone MU
19.405 Aircraft Landing Facility L-F

## 19.401 WILLAMETTE GREENWAY ZONE WG

In a W-G Zone the following regulations shall apply:

### 19.401.1 Purpose

The purpose of the Willamette Greenway Zone is to protect, conserve, enhance, and maintain the natural, scenic, historic, economic, and recreational qualities of lands along the Willamette River and major courses flowing into the Willamette River.

### 19.401.2 Area Defined

The Willamette Greenway Zone is that area within the Willamette Greenway plan boundary identified on the Zoning Map. The WG Zone is in combination with the underlying zone.

### 19.401.3 Limitations on Use

All land use actions and any change or intensification of use, or development permitted in the underlying zone, are conditional uses, subject to the provisions of Section 19.905.

Prohibited uses:

A. Commercial, industrial and residential structures and residential accessory structures exceeding 35 ft in height;

B. Residential floating structures;

C. New private noncommercial boathouses or storage structures, including temporary structures;

D. New private noncommercial docks exceeding 400 sq ft;

E. Grading and tree cutting is prohibited in the buffer, except as allowed in Subsections 19.401.8.B.1 through 6.

### 19.401.4 Definitions

"Change of use" means making a different use of the land or water which requires construction; alterations of the land, river bed, bank, water, or other areas outside of existing buildings or structures; and which substantially alters or affects the land or water.

"Develop, developing" means activities which result in removal of substantial amounts of vegetation or in the substantial alteration of natural site characteristics; e.g., to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, to create or terminate rights of access.

"Development" means the act, process, or result of developing.

"Floodway" means the channel of the river and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than 1 ft (FEMA definition).

"Intensification" means any change of use; or action which increases or expands the area or amount of an existing use or the level of activity, including remodeling the exterior of a structure if the remodeling substantially alters the appearance of the structure.

"Large trees" means trees with at least a 6-in caliper at 5 ft of height.

"Native vegetation" means plant species indigenous to the Portland metropolitan area, consisting of trees, shrubs, and ground cover, as identified in the Portland plant list.

"Nonresidential floating structure" means water-dependent or water-related structures, usually made of wood or concrete and containing a flotation system of polystyrene or similar materials, that ride on the river surface anchored by a cable either to the river bed, to piling, or to the riverbank, for uses including, but not limited to: public walks or river access not associated with marina or moorage; waterski jumps; swimmer's resting platform; storage of marine-related equipment or boat storage; or boat fueling facility. Sometimes fully enclosed buildings are situated atop the floating structure. Restaurants, snack bars, and the like are included in this definition.

"Ordinary high water line" means the line on the bank or shore to which the water ordinarily rises annually. Ordinary high water shall be established by the Division of State Lands (DSL) with reference to historical data, vegetation, field observations, survey, or other generally accepted methods.

"Public access" means facilities that enable the public to safely make physical contact with the river and its environs.

"Residential floating structure" (houseboat or floating home) means single- or multifamily dwellings supported on the river by a flotation system, which may include a system of piles, berths, walkways, and ramps. This is not a water-dependent or water-related use.

"Riparian" means related to, living, or located on the bank of a waterway.

"Riverbank" means a land feature or constructed structure that serves to contain the waters of the river. It can be distinguished from upland areas by the presence of riparian vegetation in close proximity to flowing water. Usually the riverbank represents the limits of seasonal high water and periodic flood waters.

"Security" means any form of surety approved by the City Attorney, including, but not limited to: performance bond, letter of credit, or cash escrow account.

"View window" means an area of unobstructed view. The width of a view window shall be measured at the point where vegetation is removed.

"Water-dependent" means a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for waterborne transportation, recreation, energy production, or source of water.

"Water-related" means uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

**19.401.5 Procedures**

The following procedures shall govern the application of WG Zones:

A. In the WG Zone, all uses and their accessory uses are permitted subject to the provisions of Section 19.905.

B. The Oregon Department of Transportation shall be notified of a hearing on a conditional use in the Willamette Greenway Zone. The notice shall be sent via "certified mail, return receipt requested."

C. The provisions of the WG Zone in Section 19.401 shall apply until adoption of the Willamette Greenway Design Plan.

D. A greenway conditional use is required for all intensification or change of use, or alteration of the vegetation buffer area, or development, as defined in this section. Approval shall be granted only if the criteria in Subsection 19.401.6 are met.

E. Submittal Requirements

A vegetation/buffer plan must be submitted for each application for a greenway conditional use permit. A buffer plan is required only if the proposed development impacts the vegetation buffer defined in Subsection 19.401.8.

F. Written notice, including a copy of the application, will be sent upon receipt to the Oregon Parks and Recreation Department by certified mail—return receipt requested. The Oregon Division of State Lands, Oregon Department of Fish and Wildlife, and State Marine Board shall also be notified of each application.

G. Written notice shall be provided to the Oregon Division of State Lands after the land use action is final for activities affecting wetlands or submerged or submersible lands within the Willamette River greenway. The notice shall include local government conditions of approval.

**19.401.6 Criteria**

The following shall 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 or increase 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. Conformance to applicable Comprehensive Plan policies;

K. The request is consistent with applicable plans and programs of the Division of State Lands;

L. A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C.

**19.401.7 Setbacks**

On a case-by-case basis, uses that are not water-dependent or water-related shall be evaluated according to criteria of Subsection 19.401.6 above so that they are directed away from the river. Existing and proposed uses that are water-dependent and water-oriented may be permitted near or at the water's edge subject to review of criteria in Subsection 19.401.6 above.

### 19.401.8 Vegetation Buffer Requirements

A. A buffer strip of native vegetation shall be identified along the river, which shall include the land area between the river and a location 25 ft upland from the ordinary high water line. This area shall be preserved, enhanced, or reestablished, except for development otherwise allowed in this title, and subject to the requirements of Subsection 19.401.8.B below.

B. Prior to development (e.g., removal of substantial amounts of vegetation or alteration of natural site characteristics) within the buffer, a vegetation buffer plan for the buffer area shall be submitted for review and approval. The plan shall address the following areas and is subject to the following requirements:

1. Riverbank Stabilization

   The plan shall identify areas of riverbank erosion, and provide for stabilization. Bioengineering methods for erosion control shall be used when possible. When other forms of bank stabilization are used, pocket plantings or other means shall be used to provide vegetative cover.

2. Scenic View Protection (Screening)

   The plan shall identify the impact of the removal or disturbance of vegetation on scenic views from the river, public parks, public trails, and designed public overlooks.

3. Retain Existing Native Vegetation and Large Trees

   The plan shall provide for the retention of existing large trees and existing native vegetation, including small trees, ground covers, and shrubs, within the vegetation buffer area. Removal of native vegetation and large trees is allowed pursuant to the following standards:

   a. Large trees that are diseased, dead, or in danger of falling down may be removed if there is a clear public safety hazard or potential for property damage.

   b. Grading or tree removal is allowed in conjunction with establishing a permitted use. Only the area necessary to accommodate the permitted use shall be altered.

   c. Tree and vegetation removal may be allowed to create 1 view window from the primary residential structure to the river when suitable views cannot be achieved through pruning or other methods. The width of a view window may not exceed 100 ft or 50% of lineal waterfront footage, whichever is lesser. The applicant must clearly demonstrate the need for removal of trees and vegetation for this purpose.

4. Restore Native Vegetation

   The plan shall provide for restoring lands within the buffer area which have been cleared of vegetation during construction with native vegetation.

5. Enhance Vegetation Buffer Area

   The plan may provide for enhancing lands within the buffer area. Regular pruning and maintenance of native vegetation shall be allowed. Vegetation that is not native, except large trees, may be removed. New plant materials in the buffer strip shall be native vegetation.

6. Security that the Plan will be Carried Out

   The approved vegetation buffer shall be established, or secured, prior to the issuance of any permit for development.

C. The vegetation buffer requirements shall not preclude ordinary pruning and maintenance of vegetation in the buffer strip.

### 19.401.9 Private Noncommercial Docks

Private noncommercial docks are subject to the following requirements:

A. Only 1 dock is allowed per riverfront lot of record.

B. In areas designated as open water areas or special management areas by the Division of State Lands, docks may be restricted or additional requirements may be applied to docks. Restrictions or additional requirements will be identified by DSL in their review of the development application.

C. Private, noncommercial docks shall not exceed 400 sq ft (square footage is measured as the width times the length of the outer edge of the structure), with the following exceptions:

1. Legal nonconforming docks or boathouses;
2. Nonconforming structures may be altered or replaced pursuant to Chapter 19.800.

D. Docks, pilings, and walkways shall either be dark natural wood colors, or painted dark earthtones (dark brown or green).

E. Private noncommercial docks shall not:

1. Restrict boat access to adjacent properties;
2. Interfere with the commercial navigational use of the river, including transiting, turning, passing, and berthing movements;
3. Interfere with critical fish and wildlife habitat or fishing use of the river as determined by Oregon Department of Fish and Wildlife; nor
4. Significantly add to recreational boating congestion.

### 19.401.10 Greenway Design Plan

The WG Zone is intended to be temporary and will be replaced by the Willamette Greenway Design Plan when it is completed. The Willamette Greenway Design Plan is identified in the Comprehensive Plan of the City.

## 19.402 WATER QUALITY RESOURCE REGULATIONS

### 19.402.1 Purpose, General Policies, and Declarations

A. Many of the City's original wetland and riparian resources have been adversely affected by historical development. These regulations seek to minimize additional adverse impacts and restore and improve resources where possible while balancing property rights and development needs of the City.

B. It is the intent of this section to ensure protection of the functions and values of Water Quality Resource Areas at the time of development.

C. It is not the intent of this section to:

1. Impose any obligation on property owners for the restoration of existing developed sites to predevelopment or natural condition;

2. Impose any hardship or limitation against the continued maintenance of existing legal site conditions;

3. Restrict activities that do not constitute development or to apply to activities that do not affect the Water Quality Resource Areas. Normal lawn and yard planting and maintenance does not include planting of invasive nonnative or noxious vegetation;

4. Prohibit normal lawn and yard landscape planting and maintenance.

This section is to be interpreted consistently with this intent.

D. Relief from the strict application of this section is afforded through Subsections 19.402.11, variance provisions, and 19.402.12, modification of the Water Quality Resource Area boundaries.

E. This section provides protection for natural resources that have been identified for the purposes of implementing Statewide Planning Goal 5 and Metro Urban Growth Management Functional Plan Title 3.

F. This section establishes the Water Quality Resource Area regulations. The Milwaukie Water Quality Resource Area Map is incorporated by reference as part of this section.

G. The Water Quality Resource Area regulations allow development in situations where adverse impacts from the development can be avoided or mitigated and where the strict application of these rules would deny reasonable economic use of property.

H. Implementation of this section is in addition to and shall be coordinated with Milwaukie Municipal Code Title 19 Zoning Ordinance, Title 18 Flood Hazard Regulations, and Chapter 16.28 Erosion Control.

I. Conditions legally existing as of December 17, 2002, that are inconsistent with this section are declared legal nonconforming situations.

J. Evidence of physical conditions for sites existing at the time this section was adopted shall consist of City, County, and Metro records, aerial photography, and other information that may be available.

K. The Planning Director shall produce and maintain the Milwaukie Native Plant List.

### 19.402.2 Coordination with the Willamette Greenway Overlay

A. For properties along the Willamette River, nothing in this section shall prohibit the maintenance of view windows authorized under the Milwaukie Zoning Ordinance Section 19.401 Willamette Greenway Zone.

B. Except as provided for in Subsection 19.402.2.A, provisions of this section shall apply where they are more restrictive than Section 19.401 Willamette Greenway Zone.

### 19.402.3 Applicability

Water Quality Resource Area regulations apply to all properties containing protected water features as shown on the adopted Water Quality Resource and Flood Hazard Maps. Application for development activity shall be made in accordance with Title 19, this section, and Subsections 19.402.9 Application Requirements and 19.402.10 Development Standards.

### 19.402.4 Activities Permitted Outright

The following activities are permitted outright in the Water Quality Resource Area and therefore do not require approval under the provisions of this section, except if they result in direct stormwater discharges to the Water Quality Resource Area:

A. Stream, wetland, riparian, and upland enhancement or restoration projects and development in compliance with a natural resource management plan or mitigation plan approved by the Planning Commission.

B. Farming practices or farm uses, excluding buildings and structures, except if such activities or uses increase direct discharges to water resources.

C. Change of use where there are no exterior alterations to buildings or structures, or increases in floor area, impervious surfaces, or storage areas.

D. The normal maintenance and repair of existing structures, utilities, access, streets, driveways, and parking improvements, including asphalt overlays.

E. Temporary emergency procedures necessary for the safety or protection of property.

F. Landscape planting and maintenance that does not involve invasive nonnative or noxious vegetation.

G. Maintenance of public and private storm drainage facilities in accordance with a management plan approved by the Planning Commission.

H. Other activities similar to the above that are determined by the Planning Director to be consistent with the purpose and policies of this section and which have also been found to have no appreciable impact to the Water Quality Resource Area.

I. Removal of invasive or nonnative plant species.

### 19.402.5 Activities Permitted Under Type I Application Review

The following activities are allowed within the Water Quality Resource Area under Section 19.1004 Type I Review, subject to the conditions specified below, except if it increases direct stormwater discharges to the Water Quality Resource Area:

A. Measures to remove or abate nuisances or any other violation of State statute, administrative agency rule, or City or County ordinance, subject to a mitigation plan to be approved by the Planning Director prior to the abatement activity.

B. Tree removal as necessary to eliminate an imminent hazard to person or property when sufficient evidence of the hazard is provided to the satisfaction of the Planning Director.

C. Improvements and modifications to legal structures that do not increase the building footprint or size and location of the existing area of disturbance within the Water Quality Resource Area. New decks, patios, building extensions, or other development that extend into the Water Quality Resource Area are subject to Subsection 19.402.7.

D. Other activities similar to the above that are determined by the Planning Director to be consistent with the purpose and policies of this section and which have also been found to have no appreciable impact to the Water Quality Resource Area.

**19.402.6 Activities Permitted Under Type II Review**

The following activities are allowed in the Water Quality Resource Areas subject to approval by the Planning Director under Section 19.1005 Type II Review and compliance with Subsection 19.402.10 Development Standards.

A. Improvement of existing public utility facilities where:

1. The disturbed portion of the Water Quality Resource Area is restored; and
2. Nonnative vegetation within the disturbed area is removed from the Water Quality Resource Area and replaced with vegetation from the Milwaukie Native Plant List.

B. Any activity allowed under Subsections 19.402.4.A and B that increases direct stormwater discharges to the Water Quality Resource Area.

C. Modification to any nonconforming situation subject to Type II review under Chapter 19.800 Nonconforming Uses and Development.

D. Other activities similar to the above that are determined by the Planning Director to be consistent with the purpose and policies of this section and which have also been found to have no appreciable impact to the Water Quality Resource Area.

**19.402.7 Activities Permitted Under Type III Review**

The following activities are allowed within the Water Quality Resource Areas subject to approval by the Planning Commission under Section 19.1006 Type III Review and compliance with Subsection 19.402.10 Development Standards:

A. Any activity allowed in the base zone, other than those listed in Subsections 19.402.4.A through C.

B. Roads to provide access to protected water features or necessary ingress and egress across Water Quality Resource Areas.

C. New public or private utility facility construction.

D. Walkways and bike paths.

E. New stormwater detention, retention, or pretreatment facilities.

F. Widening an existing road adjacent to, or running parallel to, a Water Quality Resource Area.

G. Additions, alterations, rehabilitation, or replacement of existing structures, roadways, accessory uses, and development that increase the structural footprint or disturbed area within the Water Quality Resource Area.

H. Natural resource management plans and stormwater management plans.

I. Partitions and subdivisions that contain protected water features or Water Quality Resource Areas.

### 19.402.8 Prohibited Uses

A. Following adoption of this section, new structures, development, or activity other than those allowed in Subsections 19.402.4-7 are prohibited in the Water Quality Resource Area.

B. Uncontained Areas of Hazardous Materials

This prohibition shall not be effective until the Planning Director has adopted administrative measures for its implementation, which shall be no later than June 1, 2003.

### 19.402.9 Application Requirements

Applications for Type II and III review shall provide the following information in addition to the information required for the base zone:

A. A topographic map of the site at contour intervals of 5 ft or less showing a delineation of the Water Quality Resource Area, which includes areas shown on the Water Quality and Flood Management Area maps, and that meets the definition of Water Quality Resource Area in Table 19.402.9.A.

**Table 19.402.9.A**
**Vegetated Corridor Measurement by Protected Water Feature Type**

| Protected Water Feature Type (see definitions) | Slope Adjacent to Protected Water Feature | Starting Point for Measurements from Water Feature | Width of Vegetated Corridor[6] |
|---|---|---|---|
| Primary Protected Water Features[1] | < 25% | • Edge of bank full flow or 2-year storm level;<br>• Delineated edge of Title 3 wetland | 50' |
| Primary Protected Water Features[1] | > 25% for 150' or more[5] | • Edge of bankful flow or 2-year storm level;<br>• Delineated edge of Title 3 wetland | 200' |
| Primary Protected Water Features[1] | > 25% for less than 150'[5] | • Edge of bankful flow or 2-year storm level;<br>• Delineated edge of Title 3 wetland | Distance from starting point of measurement to top of ravine (break in > 25% slope)[3], plus 50'.[4] |
| Secondary Protected Water Features[2] | < 25% | • Edge of bankful flow or 2-year storm level;<br>• Delineated edge of Title 3 wetland | 15' |
| Secondary Protected Water Features[2] | > 25%[5] | • Edge of bankful flow or 2-year storm level;<br>• Delineated edge of Title 3 wetland | 50' |

[1] Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, and natural lakes and springs.

[2] Secondary Protected Water Features include intermittent streams draining 50—100 acres.

[3] Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the > 25% slope (see slope measurement in Appendix).

[4] A maximum reduction of 25 ft may be permitted in the width of the vegetated corridor beyond the slope break if a geotechnical report demonstrates that slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-ft increments away from the water feature until slope is less than 25% (top of ravine).

[5] Vegetated corridors in excess of 50 ft for primary protected features, or in excess of 15 ft for secondary protected features, apply on steep slopes only in the uphill direction from the protected water feature.

[6] Vegetated corridor width shall be applied to the outer boundaries of water features, such as the edge of a wetland and both banks of a watercourse.

B. The location of all existing natural features including, but not limited to, all trees of a caliper greater than 6 in. diameter at breast height (DBH), natural drainages on the site, springs, seeps, and outcroppings of rocks or boulders within the Water Quality Resource Area.

C. Location of Wetlands

Where wetlands are identified, the applicant shall follow the Division of State Lands wetlands delineation process. The delineation shall be prepared by a professional wetlands specialist and will be accepted only after approval by the Oregon Division of State Lands.

D. An inventory and location of existing debris and noxious materials.

E. An assessment of the existing condition of the Water Quality Resource Area in accordance with Table 19.402.9.E.

**Table 19.402.9.E**
**Water Quality Resource Area Requirements**

| Existing Condition of Water Quality Resource Area | Requirements Applicable to Portions of the Water Quality Resource Area Disturbed During Development or Land Disturbance |
|---|---|
| **Good Existing Corridor:**<br><br>Combination of trees, shrubs, and groundcover are 80% present, and there is more than 50% tree canopy coverage in the vegetated corridor. | Submit an inventory of vegetation in areas proposed to be disturbed and a plan for mitigating water quality impacts related to the development, including: sediments, temperature and nutrients, sediment control, temperature control<br><br>Or addressing any other condition that may have caused the Protected Water Feature to be listed on DEQ's 303 (d) list.<br><br>Inventory and remove debris and noxious materials. |
| **Marginal Existing Vegetated Corridor:**<br><br>Combination of trees, shrubs, and groundcover are 80% present, and 25—50% canopy coverage in the vegetated corridor. | Vegetated disturbed and bare areas with nonnuisance plantings from the Milwaukie Native Plant List.<br><br>Inventory and remove debris and noxious materials.<br><br>Revegetate with native species using a City-approved plan developed to represent the vegetative composition that would naturally occur on the site.<br><br>Revegetation must occur during the next planting season following site disturbance. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site.<br><br>Restore and mitigate according to approved plan using nonnuisance plantings from the Milwaukie Native Plant List.<br><br>Inventory and remove debris and noxious materials. |

| Table 19.402.9.E CONTINUED<br>Water Quality Resource Area Requirements | |
|---|---|
| **Existing Condition of Water Quality Resource Area** | **Requirements Applicable to Portions of the Water Quality Resource Area Disturbed During Development or Land Disturbance** |
| **Degraded Existing Vegetated Corridor:**<br><br>Less vegetation and canopy coverage than Marginal Vegetated Corridors, and/or greater than 10% surface coverage of any nonnative species. | Vegetate disturbed and bare areas with appropriate plants from the Milwaukie Native Plant List.<br><br>Remove nonnative species and revegetate with nonnuisance plantings from the Milwaukie Native Plant List.<br><br>Plant and seed to provide 100% surface coverage.<br><br>Restore and mitigate according to approved plan using nonnuisance plantings from the Milwaukie Native Plant List.<br><br>Inventory and remove debris and noxious materials. |

F. An inventory of vegetation, including percentage ground and canopy coverage.

G. Alternatives analysis demonstrating that:

1. No practicable alternatives to the requested development exist that will not disturb the Water Quality Resource Area; and
2. Development in the Water Quality Resource Area has been limited to the area necessary to allow for the proposed use; and
3. The Water Quality Resource Area can be restored to an equal or better condition in accordance with Table 19.402.9.E; and
4. An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.

H. For applications seeking an alteration, addition, rehabilitation, or replacement of existing structures located within the Water Quality Resource Area:

1. Demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the Water Quality Resource Area than the one proposed; and
2. If no such reasonably practicable alternative design or method of development exists, the project should be conditioned to limit its disturbance and impact on the Water Quality Resource Area to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement, or rehabilitation; and
3. Provide mitigation to ensure that impacts to the functions and values of the Water Quality Resource Area will be mitigated or restored to the extent practicable.

I. A Water Quality Resource Area mitigation plan that contains the following information:

1. A description of adverse impacts that will be caused as a result of development;
2. An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 19.402.9.E;

3. A list of all responsible parties including, but not limited to, the owner, applicant, contractor, or other persons responsible for work on the development site;
4. A map showing where the specific mitigation activities will occur;
5. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting, and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.

J. All information contained in the application submittal requirements and site plan requirements forms prescribed by the Planning Director.

K. The application fee as adopted by the City Council.

**19.402.10 Development Standards**

Applications for development or land disturbance on properties that contain Water Quality Resource Areas shall demonstrate compliance with the following standards:

A. The Water Quality Resource Area shall be restored and maintained in accordance with the mitigation plan and the specifications in Table 19.402.9.E.

B. To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Quality Resource Area.

C. Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.

D. Prior to construction, the Water Quality Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as may be allowed by this section. Such markings shall be maintained until construction is complete.

E. Stormwater Pretreatment Facilities

1. The stormwater pretreatment facility may encroach a maximum of 25 ft into the outside boundary of the Water Quality Resource Area of a primary water feature; and
2. The area of encroachment must be replaced by adding an equal area to the Water Quality Resource Area on the property.

F. Additions, Alterations, Rehabilitation, and Replacement of Lawful Structures

1. For existing structures, roadways, driveways, accessory uses, and development which are nonconforming, this section shall apply in addition to the nonconforming use regulations of the City.
2. Additions, alterations, rehabilitation, or replacement of existing structures, roadways, driveways, accessory uses, and development shall not encroach closer to the protected water feature than the existing structures, roadways, driveways, accessory uses, and development.

G. Off-site Mitigation

Off-site mitigation shall not be used to meet mitigation requirements of this section.

H. Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution, or sedimentation to the adjacent Water Quality Resource Area.

I. Where practicable, the types, sizes and intensities of lights must be placed so that they do not shine directly into the natural resource locations.

J. Where proposed, development of trails, rest points, viewpoints, and other facilities for the enjoyment of the resource must be done in such a manner so as to reduce impacts on the natural resource while allowing for the enjoyment of the resource.

K. Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, except where mitigation is approved, so as to provide a transition between the proposed development and the natural resource, provide opportunity for food, water, and cover for animals located within the water quality resource.

L. Stormwater flows as a result of proposed development within and to natural drainage courses shall not exceed predevelopment flows.

M. Road crossings of major natural drainage courses will be minimized as much as possible.

N. The construction phase of the development must be done in such a manner to safeguard the resource portions of the site that have not been approved for development.

**19.402.11 Variances**

A. The purpose of this subsection is to ensure that compliance with this section does not cause unreasonable hardship. To avoid such instances, the requirements of this section may be varied. Variances are also allowed when strict application of this section would unreasonably deprive an owner of economically viable use of land.

B. This subsection applies in addition to the standards governing proposals to vary the requirements of the base zone.

C. A variance to avoid the unreasonable loss of economically viable use of a lot that contains protected water features is permitted. Applicants must demonstrate that without the proposed variance, the reasonable economic use of the property would be denied. The applicant must show that no other development proposal could result in permission for an economically viable use of the property.

D. Variance Conditions

The Planning Commission may impose such conditions as are deemed necessary to minimize adverse impacts that may result from granting relief from provisions of this section. If a variance is granted, it shall be subject to the following conditions:

1. The minimum width of the vegetated corridor shall be 25 ft on each side of a primary protected water feature.
2. No more than 25% of the length of the Water Quality Resource Area for a primary protected water feature within a development site can be less than 25 ft in width on each side of the water feature.

**19.402.12 Map Administration**

A. The purpose of this subsection is to provide a process for amending the Water Quality Resource Area Map to add water resources and correct the location of protected water features and the Water Quality Resource Areas.

B. Map Corrections, Deletions

1. Improperly mapped water features shown on the Milwaukie Water Quality Resource Area Maps may be deleted by Type II review in accordance with Section 19.1005 subject to the following criteria:

   a. In the case of wetlands, submittal of a wetland delineation prepared by a professional wetland scientist in accordance with the 1996 Oregon Freshwater Wetland Assessment Methodology demonstrating that the site does not contain wetlands.

   b. In the case of drainages, submittal of a hydrology report prepared by a professional engineer demonstrating that the drainage does not meet the definition of a protected resource.

2. The Planning Director shall confer with the Division of State Lands and Metro to confirm delineation and hydrology reports as may be needed prior to issuing a notice of decision on a requested map deletion.

3. The City shall amend the Water Quality Resource Area Map if the wetland or hydrology report demonstrates:

   a. That a primary protected water feature no longer exists because the area has been legally filled, culverted, or developed prior to the adoption of this section; or

   b. The boundaries of the Water Quality Resource Area have changed since adoption of the Water Quality and Flood Management Areas Map; or

   c. An error in the original mapping has been demonstrated.

C. Map Correction, Additions, and Modifications

Map corrections that require the addition of a protected water feature to the Water Quality Resource Area Map shall be made in accordance with Section 19.902 Amendments to Maps and Ordinances.

D. Modification of the Water Quality Resource Area

To modify the Water Quality Resource Area, the applicant shall demonstrate that the modification will offer the same or better protection of the protected water feature, Water Quality Resource Area, and flood management area by:

1. Preserving a vegetated corridor that will separate the protected water feature from proposed development; and

2. Preserving existing vegetated cover or enhancing the Water Quality Resource Area sufficient to assist in maintaining or reducing water temperatures in the adjacent protected water feature; and

3. Enhancing the Water Quality Resource Area sufficient to minimize erosion, nutrient and pollutant loading into the adjacent protected water feature; and

4. Protecting the vegetated corridor sufficient to provide filtration, infiltration, and natural water purification for the adjacent protected water feature; and

5. Stabilizing slopes adjacent to the protected water feature.

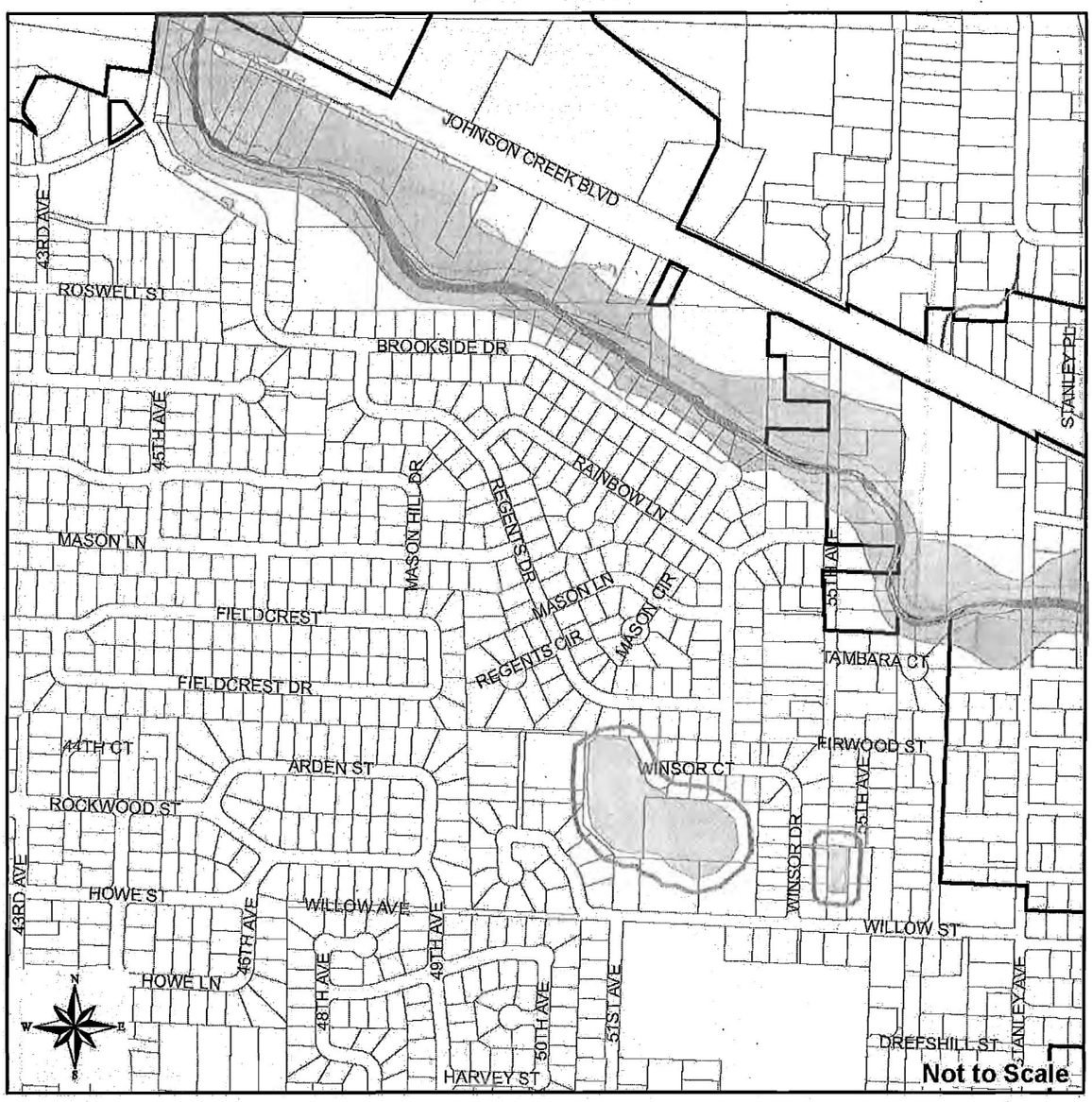
# Water Quality Resources
## Lower Johnson Creek
### Map 1 of 6

- Milwaukie Tax Lots
- Drainage Course
- Wetland Buffer
- Vegetated Corridor
- Wetlands
- FEMA 100-Year Flood
- February 1996 Flood

Features shown on this map are based on the August 1998 Metro Water Quality and Flood Management Area Map. The purpose of this map is to identify areas subject to Milwaukie Municipal Code 19.402-Water Quality Resource Regulations and Title 18 Flood Hazard Regulations.

Adopted Ord. #1912 December 17, 2002

# Water Quality Resources
## Upper Johnson Creek
### Map 2 of 6

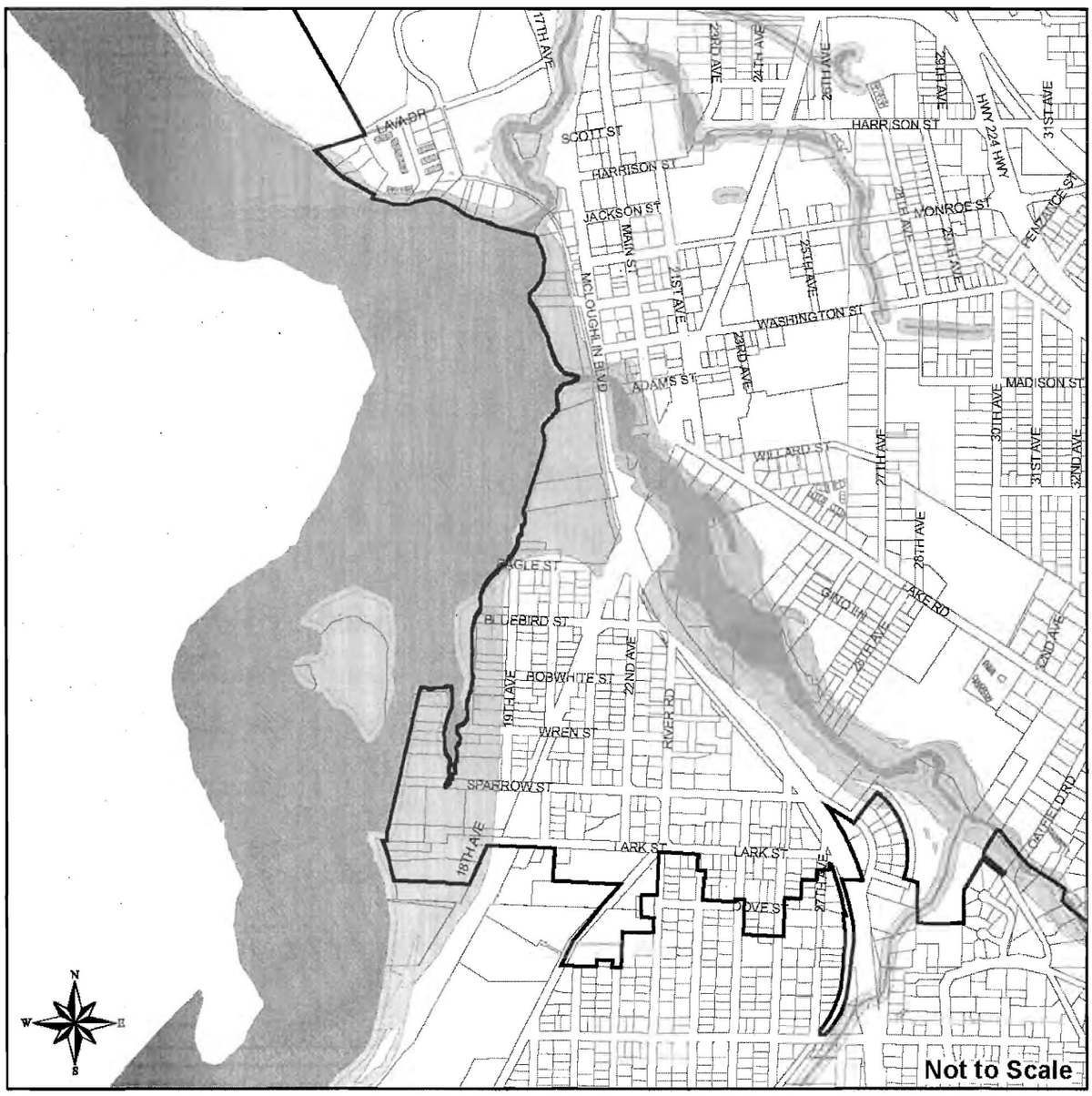



- Tax Lots
- Drainage Course
- Wetland Buffer
- Vegetated Corridor
- Wetlands
- FEMA 100-Year Flood
- February 1996 Flood

Features shown on this map are based on the August 1998 Metro Water Quality and Flood Management Area Map. The purpose of this map is to identify areas subject to Milwaukie Municipal Code 19.402- Water Quality Resource Regulations and Title 18 Flood Hazard Regulations.

Adopted Ord. #1912 December 17, 2002

# Water Quality Resources
## Willamette River and Kellogg Lake
### Map 3 of 6




- Tax Lots
- Drainage Course
- Vegetated Corridor
- FEMA 100-Year Flood
- February 1996 Flood

Features shown on this map are based on the August 1998 Metro Water Quality and Flood Management Area Map. The purpose of this map is to identify areas subject to Milwaukie Municipal Code 19.402-Water Quality Resource Regulations and Title 18 Flood Hazard Regulations.

Adopted Ord. #1912 December 17, 2002

# Water Quality Resources
## Lower Kellogg Creek
### Map 4 of 6

- Tax Lots
- Drainage Course
- Wetland Buffer
- Vegetated Corridor
- Wetlands
- FEMA 100-Year Flood
- February 1996 Flood

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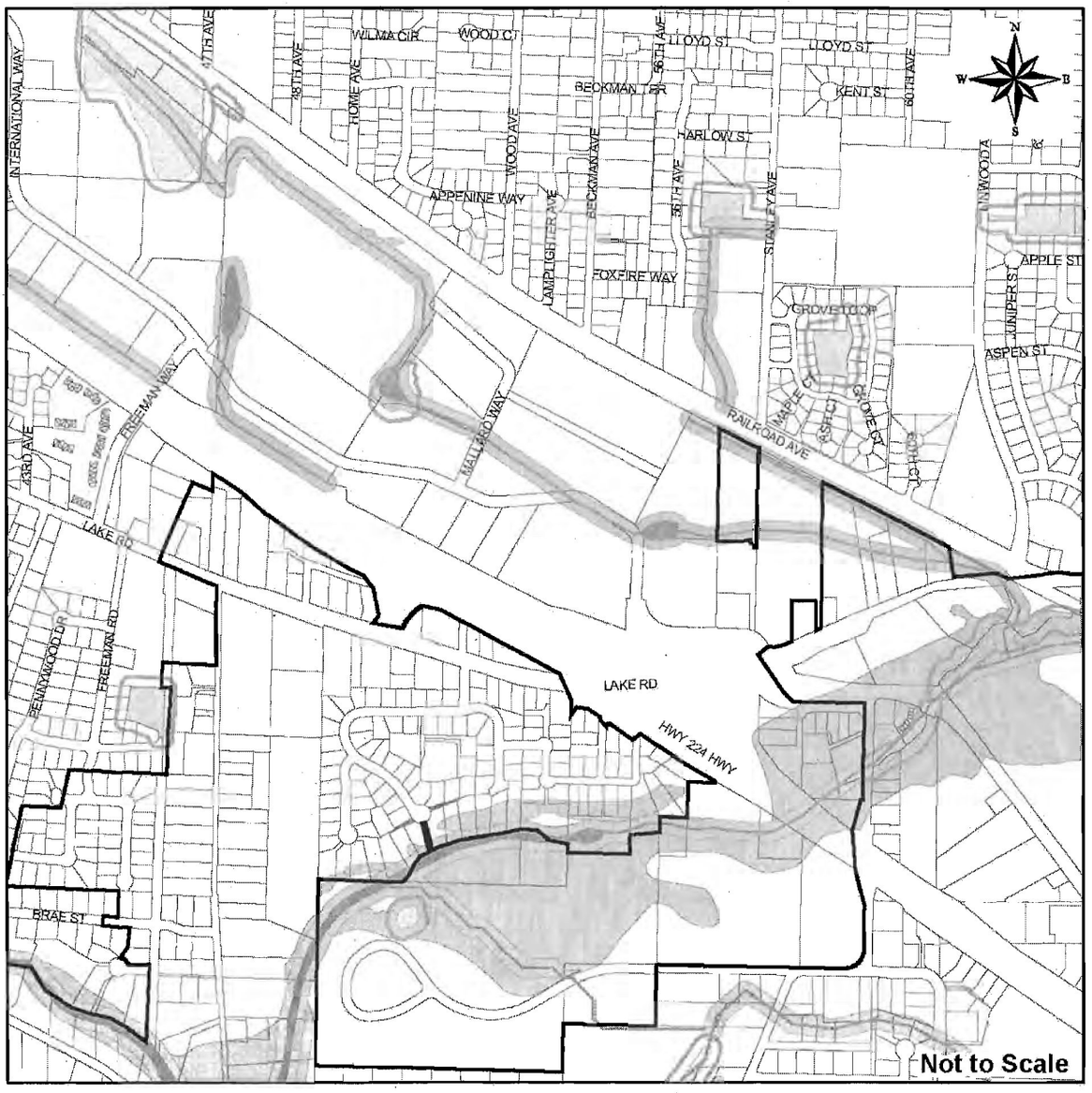
Adopted Ord. #1912 December 17, 2002

# Water Quality Resources
## Upper Kellogg Creek and Mt. Scott Creek
### Map 5 of 6




- Tax Lots
- Drainage Course
- Wetland Buffer
- Vegetated Corridor
- Wetlands
- FEMA 100-Year Flood
- February 1996 Flood

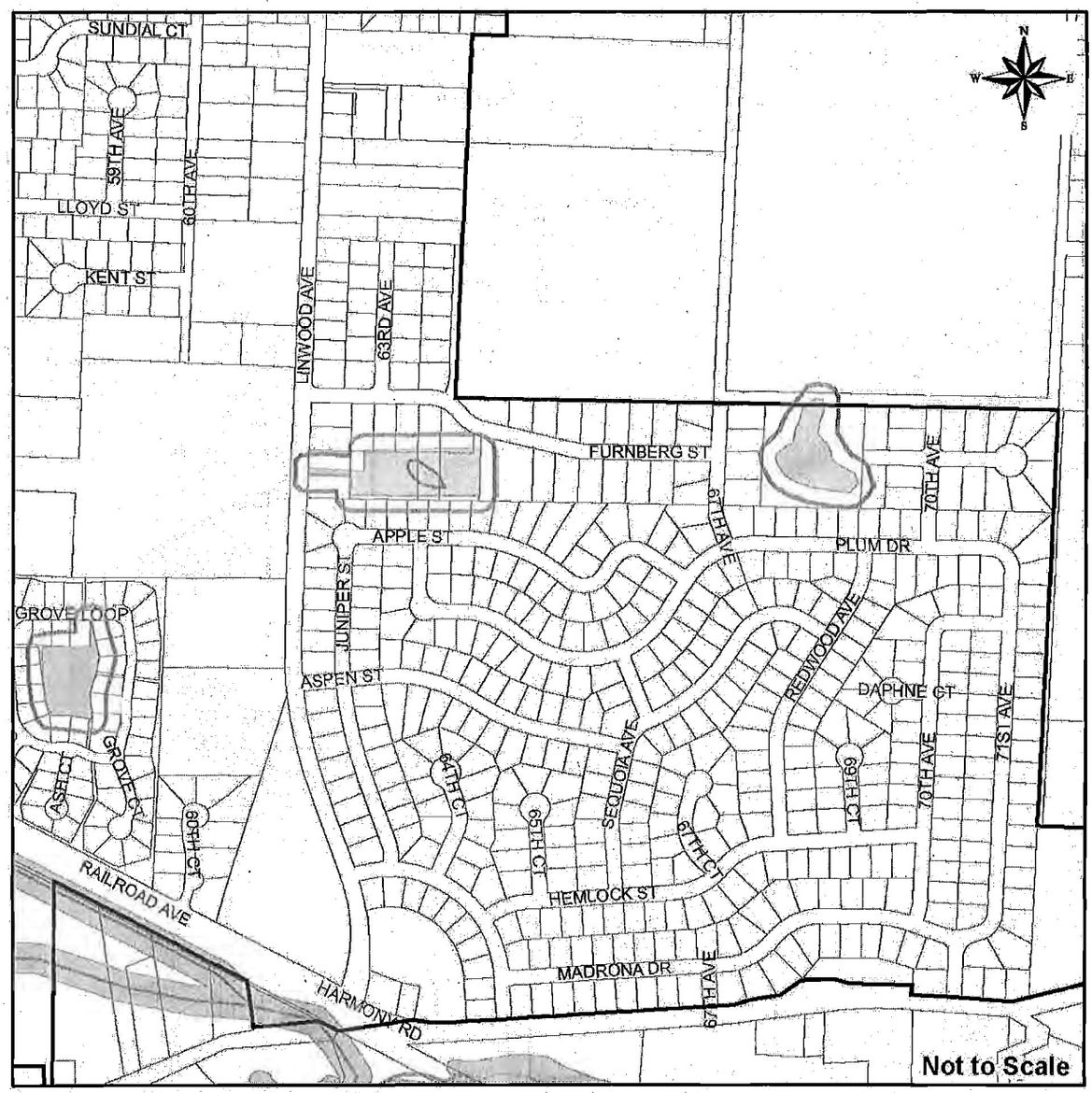
Features shown on this map are based on the August 1998 Metro Water Quality and Flood Management Area Map. The purpose of this map is to identify areas subject to Milwaukie Municipal Code 19.402-Water Quality Resource Regulations and Title 18 Flood Hazard Regulations.

Adopted Ord. #1912 December 17, 2002

# Water Quality Resources

## Linwood Neighborhood

### Map 6 of 6




- Tax Lots
- Drainage Course
- Wetland Buffer
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- Wetlands
- FEMA 100-Year Flood
- February 1996 Flood

Features shown on this map are based on the August 1998 Metro Water Quality and Flood Management Area Map. The purpose of this map is to identify areas subject to Milwaukie Municipal Code 19.402- Water Quality Resource Regulations and Title 18 Flood Hazard Regulations.

Adopted Ord. #1912 December 17, 2002

## 19.403 HISTORIC PRESERVATION OVERLAY ZONE HP

In an HP Zone the following regulations shall apply:

### 19.403.1 Purpose

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

A. Safeguard the City's heritage as embodied and reflected in such resources;

B. Encourage public knowledge, understanding, and appreciation of the City's history and culture;

C. Foster community and neighborhood pride and sense of identity based on recognition and use of cultural resources;

D. Promote the enjoyment and use of cultural resources appropriate for the education and recreation of the people of the City;

E. Preserve diverse and significant architectural styles reflecting phases of the City's history, and encourage complementary design and construction relative to cultural resources;

F. Enhance property value and increase economic and financial benefits to the City and its residents;

G. Identify and resolve conflicts between the preservation of cultural resources and alternative land uses;

H. Integrate the management of cultural resources and relevant data into public and private land management and development processes; and

I. Implement the goals and policies of the Comprehensive Plan.

### 19.403.2 Applicability

A. Section 19.403 shall apply to all historic resources within the City as identified in the Historic Resources Element of the Comprehensive Plan.

B. An historic resource may be designated HP on the Zoning Map and placed on the City historic and cultural resources inventory following the procedures of Subsection 19.403.4 of this section.

### 19.403.3 Definitions

Alteration, Landmark:

> "Landmark alteration" means a change, addition, or modification of a landmark which affects the exterior of the landmark, excluding routine maintenance as defined in Subsection 19.403.6 of this section.

"Commission" means the City of Milwaukie Planning Commission.

"Contributing" means an historic resource ranking whereby buildings, sites, structures, or objects are less significant examples of architecture or of lesser historical association. These, over time, may become a source for additional "significant" resources. To be designated as "contributing," an historic resource must receive a rating score level of 50 to 60% on the

evaluation worksheet or score a high of 10 in at least one of the categories of the evaluation worksheet.

"Demolish" means to raze, destroy, dismantle, deface, or in any other manner cause partial or total destruction of a designated resource or building in an historic district.

"Evaluation worksheet" means a rating system used by the City to rank historic resources as to their historic, architectural, or environmental characteristics. The ranking system is numerical with a top score of 86 and is part of the historic and cultural resources inventory, located in the background paper.

"Historic and Cultural Resources Inventory" or "inventory" means the 1988 Milwaukie Historic and Cultural Resources Inventory included as part of the Historic Resources Background Paper of the Comprehensive Plan.

"Historic or cultural resource" or "resource" means any site, object, building, ensemble, district or structure which is included in the Historic and Cultural Resources Inventory.

"Landmark" means a cultural resource that has been designated by the City Council as per Subsection 19.403.4 of this section.

"Significant" means an historic resource ranking whereby important buildings, sites, structures, or objects in Milwaukie are distinguished by outstanding qualities of architecture, relationship to environment, and/or historic associations. To be designated as "significant," an historic resource must receive a rating score level of 60% or greater on the evaluation worksheet and be at least 50 years old, or score a high of 10 in at least two of the categories of the evaluation worksheet, or be listed on the National Register of Historic Places.

"Unrankable" means historic resources that lack sufficient information to be ranked. When that information is available, those found to be "significant" or "contributing" shall be recommended by the Planning Commission for designation as "landmarks."

**19.403.4 Process for Designation or Deletion of a Landmark**

A. Application Request

The owner of record, contract purchaser, or an agent of any of the foregoing, of property within the City may make application for resource designation or deletion. The application shall be in such form and detail as the Planning Director prescribes and processed per Section 19.1007 Type IV Review. The application shall be submitted to the Planning Director. The Planning Commission or the City Council may also initiate such proceedings on their own motion.

B. Planning Commission

The Commission shall conduct a public hearing to evaluate the request. The Commission shall enter findings and make a written recommendation to the City Council.

C. City Council

The City Council shall conduct a public hearing to consider the recommendation of the Planning Commission on the request and shall either approve, approve with conditions, or deny the request.

D. Pending Permits

No new construction, exterior alteration, demolition, or removal permits for any improvement, building, or structure relative to a proposed landmark shall be issued while any public hearing or any appeal affecting the proposed action is pending.

E. Interim Measures

Upon a request for new construction, exterior alteration, or demolition of a resource which is on the inventory but designated as "unrankable," for lack of information regarding location, quality, or quantity, the applicant shall be required to first complete the designation process for the resource as outlined in this subsection.

**19.403.5 Alteration and Development**

A. Review Required

Any exterior alteration of a landmark shall be subject to review under the provision of this Subsection 19.403.5. This review applies only to those resources determined to be "significant" on the inventory. Resources designated "unrankable" must complete the process referred to in Subsection 19.403.4.

B. Application Request

The application shall be submitted to the Planning Director. The application shall be in such form and detail as the Planning Director prescribes. Applications subject to Subsection 19.403.5.C below shall follow the Type I review process of Section 19.1004.

C. Administrative Approval

1. The Planning Director shall approve alteration requests if:
   a. There is no change in the appearance and materials of the existing landmark; or
   b. The proposed alteration duplicates the affected exterior building features as determined from an historic photograph, original building plans, or other evidence of original building features.
2. The following minor alterations are exempt from review, provided these actions meet the above standards:
   a. Replacement of gutters and downspouts, or the addition of gutters and downspouts, using materials that match the appearance of those that were typically used on similar-style buildings;
   b. Repairing or providing a compatible new foundation that does not result in raising or lowering the building elevation;
   c. Replacement of building material, when required due to deterioration of material, with building material that matches the appearance of the original material;
   d. Repair and/or replacement of roof materials with the same kind of roof materials existing, or with materials which are in character with those of the original roof;
   e. Application of storm windows made with wood, bronze, or flat finished anodized aluminum, or baked enamel frames which complement or match the color detail and proportions of the building;
   f. Replacement of wood sashes with new woods sashes, or the addition of wood sashes when such is consistent with the original historic appearance;
   g. Installation of solar equipment so that it complies with Subsection 19.403.5.C.2.e above;
   h. The installation of security doors and security lighting systems.

D. Other Requests

All requests that do not meet the provisions of Subsection 19.403.5.C above shall be forwarded to the Commission. The Commission's decision will be final after notice and public hearing held the same as Section 19.1006 Type III Review. The Commission shall approve or disapprove issuance of the permit. The Commission may attach conditions to the approval for permit which must be adhered to for the permit to remain valid.

E. Criteria and Findings

Approval of a permit to alter a landmark or any property in the HP District shall be based on findings of adherence to the following guidelines:

1. Retention of Original Construction

   Distinguishing original qualities defining a resource's character shall not be destroyed. Removal or alteration of historic materials or distinctive architectural features should be avoided when possible.

2. Building Height

   Existing building heights should be maintained. Alteration of roof pitches shall be avoided. Raising or lowering a building's permanent elevation when constructing a foundation shall be avoided, except as required by building code or floodplain development permit.

3. Horizontal Additions

   The scale and proportion of building additions, including the relationship of windows to walls, shall be visually compatible with the traditional architectural character of the historic building. Contemporary design for alterations and additions is acceptable if the design respects the building's original design and is compatible with the original scale, materials, and window and door-opening proportions of the building.

4. Windows

   Window replacements shall match the visual qualities of original windows as closely as possible. Wood window frames are preferred in meeting this standard. However, if non-wood replacements exhibit similar visual qualities as their wooden counterparts, they may be acceptable. The original number of window panes shall be maintained or restored when replacements are required.

5. Restoration Possible

   Except where building code precludes it, new additions or alteration to buildings shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the original building could be restored.

6. Signs and Lighting

   Signs, lighting, and other appurtenances (such as walls, fences, awnings, and landscaping) shall be visually compatible with the original character of the building.

7. Time Period Consistency

   Buildings shall be recognized as products of their own time. Alterations that have no historical basis or which seek to create an earlier appearance shall be avoided.

8. Visual Integrity/Style

   Distinctive stylistic features, such as a line of columns, piers, spandrels, or other primary structural elements, or examples of skilled craftsmanship which characterize a building, shall be maintained or restored as far as is practicable.

9. Replacement or Additional Materials

   Whenever possible, deteriorated architectural features shall be repaired rather than replaced. In the event replacement of an existing feature is necessary, or an addition is proposed, new materials should match those of the original building, to the extent possible, in composition, design, color texture, and other visual qualities.

10. Buffering

    An appropriate buffer or screen, as provided under Subsection 19.504.6, may be required when a new commercial or industrial improvement or use is proposed on or adjacent to a designated resource, or within or adjacent to an historic district.

F. Appeals

Appeals shall be heard by the City Council as per Section 19.1010 of this title.

**19.403.6 Maintenance and Repair**

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

**19.403.7 Demolition**

A. Notification of Demolition Request

If an application is made for a building permit to demolish all or part of a designated cultural resource, to the extent that the historic designation is affected, the building official shall, within 7 days of the receipt of an application, transmit a copy of the application to the Commission. This review applies to all resources determined to be "significant" or "contributing" on the inventory. Resources determined to be "unrankable" shall first complete the process referred to in Subsection 19.403.4.

B. Property Owner Action

For a period of not less than 30 days prior to the public hearing the property owner shall do as follows:

1. List the property for sale with a real estate agent for a period not less than 90 days with the intent of selling or relocating the resource intact. Such real estate agent shall advertise the property in local and state newspapers of general circulation in the area. This listing requirement can be reduced if the Commission approves the demolition request;
2. Give public notice by posting a visible "For Sale" sign on the property which shall be in bold letters, no less than 6 in. in height, and shall read as a minimum: HISTORIC BUILDING FOR SALE—WILL BE DEMOLISHED UNLESS MOVED;
3. Prepare and make available any information related to the history and sales of the property to all individuals, organizations, and agencies who inquire.

C. Public Hearing Review

The Commission shall hold a public hearing within 45 days of application. The procedures shall be the same as those in Section 19.1006 Type III Review.

D. Review Criteria and Findings

In determining the appropriateness of the demolition, as proposed in an application for a building permit, the Commission shall consider the following:

1. All plans, drawings and photographs as may be submitted by the applicant;
2. Information presented at a public hearing held concerning the proposed work;
3. The City Comprehensive Plan, including the economic, social, environmental and energy consequences;
4. The purpose as set forth in Subsection 19.403.1;
5. The criteria used, and findings and decisions made, in the original designation of the landmark or historic district in which the property under consideration is located;
6. The historical and architectural style, design, arrangement, materials, or its appurtenant fixtures; the relationship of such features to similar features of other buildings within the district; and the position of the building or structure in relation to public rights-of-way and to other buildings and structures in the area;
7. The effects of the proposed work upon the protection, enhancement, perpetuation, and use of the district which cause it to possess a special character or special historic or aesthetic interest or value;
8. Whether denial of the permit would involve substantial hardship to the applicant, and whether issuance of the permit would act to the substantial detriment of the public welfare and would be contrary to the intent and purposes of this title.

E. Approval of Demolition Request/Appeals

The Commission may approve the demolition request after considering the criteria under Subsection 19.403.7.D above. Action by the Commission approving the issuance of permit for demolition may be appealed to the City Council by any aggrieved party, by filing a notice of appeal, in the same manner as provided in Subsection 19.403.5.F. If no appeal is filed, the Building Official shall issue the permit in compliance with all other codes and ordinances of the City.

F. Denial/Stay of Demolition

1. The Commission may reject the application for permit if it determines that in the interest of preserving historic values, the property should not be demolished. In that event, issuance of the permit shall be suspended for a period not exceeding 30 days from the date of public hearing. The Commission may invoke an extension of the suspension period if it determines that there is a program or project under way which could result in public or private acquisition of the landmark, and that there is reasonable ground to believe that such program or project may be successful. Then the Commission, at its discretion, may extend the suspension period to 30 days, to a total of not more than 120 days from the date of public hearing for demolition permit.
2. If all such programs or projects are demonstrated to the Commission to be unsuccessful, and the applicant has not withdrawn his or her application for demolition

permit, the building official shall issue such permit, if the application otherwise complies with the codes and ordinances of the City.

3. Action by the Commission suspending issuance of the permit for demolition may be appealed to the City Council by the applicant for the permit, by filing a notice of appeal in the same manner as provided in Subsection 19.403.5.F.

**19.403.8 Uses Permitted**

A. Primary Uses

A resource may be used for any use which is allowed in the underlying district, subject to the specific requirements for the use, and all other requirements of this section.

B. Conditional Uses

Except within low and moderate density residential designations, uses identified in Subsection 19.403.8.C below which would not be allowed in the underlying zones may be allowed when such use would preserve or improve a resource which would probably not be preserved or improved otherwise, subject to the provisions of Subsection 19.403.6. Such uses may also be allowed in the low and moderate density residential designations if located along minor or major arterial streets, with the exception of bed and breakfast establishments, which may be located on any street. Approval of such uses shall include conditions mitigating adverse impact of the use on neighboring properties and other requirements as per Section 19.905 Conditional Uses.

C. The following uses may be permitted after a public hearing conducted pursuant to Section 19.1006:

1. Art and music studios;
2. Galleries;
3. Offices/clinics;
4. Craft shops;
5. Bed and breakfast establishments;
6. Gift shops;
7. Museums;
8. Catering services;
9. Bookstores;
10. Boutiques;
11. Restaurants;
12. Antique shops;
13. Community centers for civic or cultural events;
14. Other uses determined by the Planning Commission to be similar to those listed above.

## 19.404 MIXED USE OVERLAY ZONE MU

### 19.404.1 Purpose

This section is intended to provide assurance that the core downtown area and specific underdeveloped sites within the Town Center will be developed under interim mixed use development guidelines and requirements prior to final adoption of all of the regulations associated with the implementation of the Town Center Master Plan and associated documents.

### 19.404.2 General Applicability

The Mixed Use Overlay Zone will be attached to the primary zone for properties identified as critical to the efforts of the City to develop a mix of uses within the Town Center Master Plan area. These properties include, but are not limited to, those within Sites 21, 22, and 26 of Subarea 2 and Site 41 of Subarea 4 of the Town Center Master Plan. The MU Overlay Zone will be applied to the Zoning Map.

### 19.404.3 Primary Uses

Provisions of Section 19.404 are intended to allow mixed use development, subject to the processes identified in Subsection 19.404.6 below, including retail, commercial, office, and residential development, as listed below.

A. Retail commercial uses such as food store, drugstore, gift shop, and hardware store selling shelf goods primarily (drive-up convenience stores are not permitted);

B. Multifamily attached condominium dwellings;

C. Multifamily attached apartment dwellings;

D. Single-family attached small lot townhouses;

E. Professional offices;

F. Personal service businesses such as haircutting shop, tailor shop, laundry, and dry cleaning pickup station, shoe repair, computer, and bicycle repair, office equipment and services, and electronics repair;

G. Motion picture theater (adult theaters are not permitted);

H. Restaurant and cafe, outdoor seating where provided for in the site design and located off of the public sidewalk area (drive-in and drive-through food establishments are not permitted);

I. Brew pub which serves food;

J. Hotel;

K. Parking facility;

L. Financial institution (without drive-up tellers);

M. Trade or commercial school;

N. Department or furniture store;

O. Bed and breakfast;

P. Service station without associated minimart—minor repair service allowed if approved through a mixed use overlay review application;

Q. Farmers' market;

R. Public park or community meeting area;

S. Youth center;

T. Day-care facilities;

U. Any other use similar to the above and not listed elsewhere.

**19.404.4 Applicability**

Development review and approval, pursuant to Subsection 19.404.6, is required for all development on sites having a Mixed Use Overlay Zone, unless the proposed development qualifies for an exception under Subsection 19.404.5.

**19.404.5 Exemptions from Review**

The following activities are exempt from review under the Mixed Use Overlay Zone:

A. Change of use where there are no exterior alterations to the buildings or structures, or increases in floor area, impervious surfaces, or storage areas;

B. The sale of property;

C. The normal maintenance and repair necessary for a legally existing use.

**19.404.6 Development Review Process and Criteria**

A. Preapplication Conference

1. Prior to submittal of an application for development within the MU Overlay Zone, the applicant shall be required to attend a preapplication conference with Community Development staff. The applicant must submit a specific written proposal and a site plan drawn to scale in order to schedule a preapplication conference.

2. At the preapplication conference, staff shall determine the applicable development review procedure which would apply to the applicant's specific proposal. Staff shall provide appropriate application materials and outline the applicable review procedure. The applicant shall be required to schedule an appointment with staff to submit the completed MU overlay review application.

B. Planning Commission Review

The Planning Commission shall review development requests within the Mixed Use Overlay Zone, per the procedures outlined in Section 19.1006 Type III Review.

C. Criteria

The Planning Commission may grant approval of a mixed use overlay review upon a determination that the following circumstances exist:

1. The proposed project is in compliance with the Milwaukie Comprehensive Plan;

2. The proposed project is in compliance with the Town Center Master Plan (TCMP);

3. The proposed project is in compliance with the guidelines and requirements of the MU Overlay Zone;

4. The proposed project complies with any requirements of the underlying zone which have not been superseded by the provisions of the Mixed Use Overlay Zone;

5. The proposed project complies with Chapters 19.500, 19.600, and 19.700 of the Zoning Ordinance.

D. Minor Development Review

The Planning Director may approve minor changes in any development permit or small scale improvements to legally existing uses, through the process designated under Section 19.1004 Type I Review, provided that such changes:

1. Do not increase the intensity of any use;
2. Meet the requirements of the underlying zone and the specific site design standards of Subsection 19.404.8;
3. Are consistent with the Town Center Master Plan;
4. Do not significantly affect adjacent property or uses, will not cause any deterioration or loss of any natural feature or open space, nor significantly affect any public facility; and
5. Do not affect any conditions specifically placed on the development by the Planning Commission or City Council.

### 19.404.7 Application Materials

An application for a mixed use overlay review shall include the following:

A. Name, address, and telephone number of applicant and/or property owner;

B. Address and reference map number of the subject property;

C. North arrow, scale, and date of revision;

D. Narrative concerning the proposed request, including a written report identifying how the proposal complies with the applicable approval criteria outlined in Subsection 19.404.6.C;

E. Copy of deed showing ownership or interest in the subject property. If the applicant is not the owner or sole owner, written authorization from the owner or joint owner(s) of the property shall be submitted allowing the applicant to apply for the mixed use overlay review;

F. Vicinity map;

G. Comprehensive plan and zoning designations of subject property;

H. A map showing existing uses, structures, lot lines, topography, and the location of existing and proposed utilities and easements within 100 ft of the property;

I. A map showing the location of all existing trees, their types, location, and diameter at 5 ft from grade. This map shall be based on a surveyed location of the trees. The map shall identify which trees, if any, are proposed for removal. This tree map may be combined with the landscaping plan if the resulting plan is legible;

J. Detailed and dimensioned plans, drawn to scale for the specific project, including, but not limited to, the site development plan, building elevations, floor plans, landscaping plan, and parking plan. These plans shall show lot dimensions based on a survey of the property; existing and proposed property boundaries; the distance from structures to property lines and between structures; the building footprint with all projections; and location of driveways, walkways, paved areas, and disabled access and parking. Parking shall address all requirements of Chapters 19.600 and 19.700 of the Zoning Ordinance;

K. Color and material samples of paint, siding, and roof material;

L. A sign program, where applicable;

M. Reduced copies (8½ by 11 in) of all plans and maps;

N. Any information required by other provisions of local, State, or federal law;

O. Additional drawings, surveys, studies, or other materials necessary to understand or support the proposed use, as required by the Planning Department through the preapplication process;

P. Notice labels and map;

Q. Payment of the applicable fee.

**19.404.8 Development Standards**

Except as provided in Subsection 19.404.9.A.1, the following development standards apply to all proposals which have been determined to be subject to the Mixed Use Overlay Zone. Development in this overlay zone shall follow the standards and guidelines for development and for specific sites, as indicated below. All development proposals shall comply and not conflict with the Milwaukie Comprehensive Plan and the Town Center Master Plan.

A. Commercial and Commercial/Residential Mixed Use (office uses are Included in the Commercial designation)

1. Proposed development shall incorporate a 1:0.5 to 1:2.0 floor area ratio of commercial to residential development. (For every 1 sq ft of commercial, a minimum of ½ sq ft of residential would be required, and up to 2 sq ft of residential will be permitted.)
2. Retail and/or service uses are required for the on-street level of any development. Residential and office or additional commercial development can be considered for below-grade development or for stories above the street level.
3. Angled parking shall be developed where street rights-of-way are wide enough.
4. Parking for commercial and residential uses shall be located to the rear or side of a proposed development. Where parking is to be located at the side of a structure, an 8-ft-wide landscape strip shall separate the parking area from the sidewalk.
5. Shared parking shall be provided where feasible. Shared bicycle parking shall be permitted when primary pedestrian entrances are located not more than 100 ft from the shared bicycle parking area. The shared bicycle parking must be located in an area of high visibility adjacent to a pedestrian walkway or sidewalk.
6. All primary ground floor common residential entries or individual unit entries of street frontage units shall be oriented to the street, not to the interior or to a parking lot. Projecting features such as porches, balconies, bay and dormer windows, and roof pediments are encouraged for structures facing a street.
7. Where structured parking is proposed, it shall be placed in the middle of a block, with commercial and retail uses at the street level. Innovative decorative designs are required to mask any portion of the upper structure which is visible from the street. Parking dimensions shall not include support posts of the underground or aboveground parking structure.
8. Parking which is provided without a parking structure shall comply with the dimensional and landscaping requirements of Chapter 19.600 of the Zoning Ordinance.
9. Auto-oriented and drive-in uses are prohibited, except for service stations without related minimarts when a conditional use has been approved.
10. A minimum of 60% of the ground floor wall area in retail development abutting pedestrian ways and plazas shall consist of nonreflective windows and doorways.

11. Outdoor displays and café areas shall be permitted subject to City right-of-way permits and related standards. If an outdoor display is located on private property adjacent to the right-of-way, the display shall not impede traffic on the public sidewalk, and the displays and daily display signs shall be removed each evening. Café seating shall be permitted on private property adjacent to the public sidewalk with approval under the site design/conditional use permit process. Outdoor café seating on private property need not be removed each evening.
12. Residential development shall incorporate shared parking, circulation, and bike parking opportunities whenever possible. A planting strip shall separate the right-of-way and the sidewalk. High and medium-density residential development is encouraged to have an articulated front façade which makes the building appear to be segmented or similar to the size and bulk of single family residential units, where possible.
13. Owners of existing single-family homes within the Mixed Use Overlay Zone may apply for a conditional use permit to allow a detached secondary living unit, an attached secondary living unit, or conversion to a duplex or triplex, provided that one of the units shall remain owner-occupied. Sound insulating and energy-efficient materials shall be provided in any of the above conversions of existing space. Setbacks and development standards of the underlying zone must be met.
14. No outside storage is allowed, with the exception of garbage dumpsters, which are screened by a solid wood fence with a gate, or fully contained individual storage units associated with residential uses.
15. If a project maximizes the residential density allowed in this overlay zone and by the Comprehensive Plan Town Center designation, additional retail or office uses can be permitted on the site through the site design/conditional use review process.
16. Projects accommodating a combination of residential, with retail or office, uses may cluster, combine, or separate the uses on portions of a single property, or a series of properties which are in the process of merger.
17. Residential densities between 25 and 50 dwelling units per acre shall be permitted within the Mixed Use Overlay Zone if the proposed project incorporates 7 out of 13 of the requirements listed in Subsection 19.404.8.A.18 below.
18. All new development shall comply with at least 6 of the following "essential" requirements:
    a. Special awning treatment;
    b. Special grate or paving treatment, landscaping, planter boxes or pots, and pedestrian-scale lighting between sidewalk and entrance of the building;
    c. Provision for public art or historical reference in the form of a plaque or public display;
    d. Special street lighting or other custom-designed street furniture or similar amenities;
    e. Development of public space, including, but not limited to, plazas, gathering areas, or special landscaped areas;
    f. Residential uses above ground-level retail space;
    g. Enhanced transit amenities such as covered bus shelters or bike lockers;
    h. Upgraded noise buffering on attached residential units;

i. Provision of protected play areas in residential development;

j. Provision of enhanced pedestrian accessways from rear parking areas to the frontage street;

k. Provision of decorative drinking fountains or other custom-designed street furniture;

l. Structured parking consistent with Subsection 19.404.8.A.7 above.

19. If a property to be developed includes an historic structure or a single-family home which is in good repair or can be easily repaired, the applicant may propose a density transfer in conjunction with a PD development in order to retain the single-family housing stock while allowing some higher-density development on the same or an adjacent parcel, which is combined with the parcel on which the single-family home is located.

20. In areas where new development abuts existing single-family development, a 20-ft buffer area of landscaping shall be provided and consideration shall be given to additional setback of second, third, or fourth stories.

21. Bicycle and pedestrian routes shall be provided consistent with the requirements and standards of Chapter 19.700.

**19.404.9 Specific Sites in Subareas 2 and 4**

The following additional requirements apply to proposed development in specific subareas and on specific sites:

A. Subarea 2

1. Sites 2-1 and 2-2 (Murphy Plywood Site)

a. These sites may be developed with a mix of commercial and commercial/residential space with limited service and retail uses, including restaurants. In such cases, retail uses shall be located on the ground floor adjacent to pedestrian walkways. Development of commercial and mixed uses at these sites shall comply with the provisions of Subsection 19.404.8.

b. Business Industrial (BI) uses as set forth in Section 19.316 shall also be allowed. The development of BI uses on Sites 2-1 and 2-2 shall comply with the development requirements of Section 19.316, except that outdoor storage shall be permitted. In this case, the 32nd Avenue and Meek Street property lines shall be considered front yards and a 20-ft setback shall be applied. These setbacks shall be landscaped in accordance with Subsection 19.606.2.C.2, and provided with a sight-obscuring wooden fence adjacent to the public right-of-way and residential property lines. The Planning Commission may allow these setbacks to be reduced to 10 ft, where the proposed design of the buffer is of a high quality and includes: (1) the use of masonry walls, or other acceptable material, of up to 8 ft in height; (2) enhanced landscaping; and (3) one of the elements listed in Subsection 19.404.8.A.18. Development of BI uses on the site is not required to comply with the standards set forth in Subsections 19.404.8 and 19.309.3.

2. Site 2-6 (Providence Milwaukie Hospital Site)

   This site shall be developed with a primary emphasis on specialized senior assisted-living housing and related support services that are tied to the adjacent hospital and medical complex. Development should provide for housing and medical services which will meet the needs of an aging population. The provisions of Subsections 19.404.8.A.1 and 2 shall not apply to Site 2-6. Applications for Site 2-6 will be subject to a design review. Alternative designs appropriate to meet the intent of Subsections 19.404.8.A.4, 6, and 21 will be evaluated by the Planning Commission.

B. Subarea 4

1. This site shall be developed with high-density (16 to 24 dwelling units per acre) diverse housing types. Retail, office, or lodging uses are also allowed at a 2:1 ratio (for every 2 sq ft of residential, 1 sq ft of commercial will be permitted). Commercial uses on the site shall be limited to those listed in Subsections 19.404.3.E, F, H, L, R, S, and T. Commercial use may be increased to a 1:1 ratio (1 sq ft of commercial for every 1 sq ft of residential), if amenities 2, 3, 4, 5, 7, 8, 9 and 11 of Subsection 19.404.8.A.18 are provided. A report on the status of contamination on this site shall be submitted with any proposed development.
2. Minimum vegetation for the site shall be 30%. Particular attention shall be paid to landscaping, which shall be designed to provide buffers to the residential neighborhoods to the north and east. Building heights shall also be designed to provide a transition for the neighboring residential properties. The height limit within 50 ft of the Monroe Street or 37th Avenue right-of-way shall be 2 stories or 35 ft, whichever is less. The building height for the remainder of the development on this site is 3 stories or 45 ft, whichever is less. Building setbacks from property lines shall be 15 ft for the front and rear yards and 5 ft for side yards. Minimum lot standards shall conform to the R-O-C standards, except that the minimum lot width for single-family attached and condominium units may be reduced to 20 ft wide if amenities 2, 4, 5, 7, 8 and 9 of Subsection 19.404.A.18 are provided. The distance between buildings on the same lot shall be 6 ft for 1 story and a minimum of 5 ft per every story over one.

**19.404.10 Consistency with Underlying Zones**

The MU Overlay Zone is anticipated to overlay a number of different zones. The following subsection addresses areas where the MU overlay will control development.

A. R-O-C Zone

The uses and processes stipulated in the MU Overlay Zone supersede those identified in the R-O-C Zone. The minimum lot size shall be 5,000 sq ft, and the density shall be controlled by the MU overlay and the Comprehensive Plan alone. No yards are required. The height restriction is based on the MU overlay height allowance. The lot coverage requirement and transition area requirement are removed in favor of the site design process. Use restrictions are superseded by those in the MU Overlay Zone.

B. WG Zone

The requirements of the Willamette Greenway overlay Zone control when in conflict with the provisions of the MU Overlay Zone. Compliance with the Willamette Greenway overlay requires that a conditional use permit be reviewed and approved. When a Willamette Greenway Zone and a mixed use zone both overlay a property, a single site design/conditional use permit application may be processed. The fee set for the site design/conditional use permit shall be the fee paid for the combined application.

C. NR Zone

The requirements of the Natural Resource Overlay Zone and the MU Overlay Zone both apply to a property which is subject to both overlay zones. An NR application must be processed prior to or concurrent with a development proposal under the MU Overlay Zone. If a project is determined not to be subject to the MU Overlay Zone, but is also an NR Zone property, a separate determination of the applicability of the NR Zone must be made.

### 19.404.11 Validity of Uses

In the MU Overlay Zone, uses prohibited by this overlay zone that were legally established or occupied on or prior to the effective date of this overlay zone shall be considered to be legal nonconforming uses.

### 19.404.12 Nonconforming Uses

A. Milwaukie Code provisions regarding construction, discontinuance, improvement, or change of nonconforming uses, as contained in Chapter 19.800, are applicable to uses within the MU Overlay Zone.

B. In addition to meeting requirements as specified in Chapter 19.800, development proposals involving nonconforming uses or structures must also comply with the setback, landscaping, and access standards of the MU Overlay Zone.

## 19.405 AIRCRAFT LANDING FACILITY ZONE L-F

In an L-F Zone the following regulations shall apply:

### 19.405.1 Purpose

The purpose of the L-F Zone is to minimize hazards related to aircraft landing facilities. Special height limitations or other restrictions in addition to those already embodied in this chapter may be necessary in order to prevent the establishment of obstructions to the air space required by aircraft in landing and taking off from airports, helicopter pads or other landing fields. Furthermore, establishment of any new aircraft landing facility should be undertaken only after an evaluation has been made of its effects on the safety, welfare, and property values of owners or occupants of nearby property. The L-F Zone is a superimposed zone applied in combination with existing regular zones.

### 19.405.2 Limitations on Use

In an L-F Zone an airport, helicopter, or other aircraft landing facility and a use or conditional use permitted in accordance with the provisions of the preestablished regular zone shall be permitted only as provided below:

A. The height of any structure or part of structure, such as chimney, tower, antenna, etc., shall be limited according to requirements established by the Planning Commission or by other appropriate authorities.

B. In approach zones to airports or other aircraft landing facilities, as designated by the Planning Commission or other appropriate authorities, no meeting place which is designed to accommodate more than 25 persons at one time shall be permitted.

C. The size of the property upon which the airport or landing facility is proposed shall be sufficient to permit the safe operation of aircraft, to allow adequate space for all associated facilities, and to protect adjacent property from the impact of aircraft operation and associated activity.

D. Prior to a decision on the establishment of an L-F Zone, the Planning Commission shall request a report and recommendation from the Oregon State Board of Aeronautics as to the suitability of the particular property for airport purposes and as to other conditions which might be necessary to safeguard the safety and general welfare of the public.

### 19.405.3 Procedures

The following procedures shall govern the application of L-F Zones:

A. An L-F Zone may be established, altered, or abolished subject to the provisions of Section 19.902.

B. An L-F Zone may be established in combination with other regular zones. An area approved as an L-F Zone shall be identified on the Zoning Map or map amendments with the letters "L-F" in addition to the abbreviated designation of the existing zoning.

# CHAPTER 19.500

# SUPPLEMENTARY DEVELOPMENT REGULATIONS

**SECTIONS:**

**19.501 General Exceptions**
**19.502 Accessory Structures**
**19.503 Accessory Uses**
**19.504 Site Design Standards**
**19.505 Building Design Standards**
**19.506 Manufactured Dwelling Siting and Design Standards**
**19.507 Home Occupation Standards**

## 19.501 GENERAL EXCEPTIONS

The exceptions listed in Subsections 19.501.1–4 below are "by right" exceptions. "By right" exceptions are either automatically required or allowed outright and require no special review or approval by the City to implement.

### 19.501.1 Lot Size Exceptions

If a lot or the aggregate of contiguous lots or parcels platted prior to effective date of the ordinance codified in this chapter has an area or dimension which does not meet the requirements of said ordinance, the lot or aggregate holdings may be put to a use permitted outright subject to the other requirements of the zone in which the property is located except that a residential use shall be limited to a single-family dwelling or to the number of dwelling units consistent with the density requirements of the zone. However, no dwelling shall be built on a lot with less area than 3,000 sq ft, or with no frontage on a public street. This section shall not apply in the downtown zones.

### 19.501.2 Yard Exceptions

A. In addition to yard requirements listed for each zoning district, buildings along certain major streets are subject to additional yard requirements as provided in Table 19.501.2 below. Yards shall be measured so that the minimum distance from the center line of the right-of-way to the closest point of any building is the distance listed in Table 19.501.2 plus the yard requirement of the underlying zone.

**Table 19.501.2**
**Additional Yard Requirements**

| Major Street | Distance from Centerline (plus yard requirements in zone) |
|---|---|
| Firwood Street (55th Ave. to Stanley Ave.) | 25' |
| Harmony Road | 40' |
| Harrison Street (Milwaukie Expressway to 44th Ave.) | 40' |
| Harrison Street (Milwaukie Expressway to McLoughlin Blvd.) | 30' |
| Harvey Street (32nd Ave. to 42nd Ave.) | 25' |
| Howe Street (42nd Ave. to 43rd Ave.) | 30' |
| Johnson Creek Boulevard | 30' |
| King Road | 40' |

**Table 19.501.2 CONTINUED**

| Additional Yard Requirements | |
|---|---|
| Major Street | Distance from Centerline (plus yard requirements in zone) |
| Linwood Avenue | 40' |
| Lake Road | 30' |
| Logus Road | 25' |
| Monroe Street (52nd Ave. to Linwood Ave.) | 30' |
| Oak Street | 30' |
| Oatfield Road | 30' |
| Ochoco Street | 30' |
| Olsen Street | 25' |
| Railroad Avenue | 30' |
| River Road (south of Lark St.) | 30' |
| Roswell Street (32nd Ave. to 42nd Ave.) | 25' |
| Washington Street (west of Railroad Ave.) | 30' |
| Willow Street (Windsor Dr. to Stanley Ave.) | 25' |
| 17th Avenue (Ochoco St. to McLoughlin Blvd.) | 40' |
| 32nd Avenue (north of Harrison St.) | 30' |
| 37th Avenue (Lake Rd. to Grogan Ave.) | 25' |
| 40th Avenue (Harvey St. to Railroad Ave.) | 40' |
| 42nd Avenue (Johnson Creek Blvd. to Howe St.) | 30' |
| 42nd Avenue (Harrison St. to King Rd.) | 30' |
| 43rd Avenue (Howe St. to King Rd.) | 30' |
| 55th Avenue (Firwood St. to Johnson Creek Blvd.) | 25' |

B. The following exceptions to the yard requirements are established for a lot in any one zone:

1. The required front yard need not exceed the average depth of the 2 abutting front yards within 100 ft of the proposed structure.
2. The required front yard need not exceed the average depth of the abutting front yard within 100 ft of the proposed structure and the required front yard depth.

C. Architectural features such as cornices, eaves, canopies, sunshades, gutters, steps, unroofed landings, and flues may project up to 24 in into a required side yard or 36 in into a required front or rear yard.

**19.501.3 Building Height Exceptions**

A. Projections such as chimneys, spires, domes, elevator shaft housings, flagpoles, and other similar objects not used for human occupancy are not subject to the building height limitations of this chapter, except as provided in an L-F Zone.

B. One additional story may be permitted in excess of the required maximum standard. An additional 10% of site area that is retained in vegetation beyond the minimum is required for each additional story. This provision does not apply to the R-10, R-7, R-5, or downtown zones.

### 19.501.4 Density Exceptions

A. In exchange for the dedication of parkland, residential density may be increased (and lot sizes decreased) so that overall parcel density remains the same.

B. For any housing development proposed, an additional housing unit will be allowed for each unit priced for sale at 25% below the average new single-family housing cost. The cost shall be that established in the most recent edition of "Real Estate Trends," published semiannually by the Metropolitan Portland Real Estate Research Committee, Inc. Overall project density may not exceed the allowable density plus 10%. The planned unit development density increase specified in Section 19.317 and this density increase are additive.

## 19.502 ACCESSORY STRUCTURES

### 19.502.1 General Provisions

A. No accessory structure shall encroach upon or interfere with the use of any adjoining property or public right-of-way including but not limited to streets, alleys, and public and private easements.

B. Multiple accessory structures are permitted subject to building separation, building coverage, and minimum vegetation requirements of the zoning district in which the lot is located.

C. An accessory structure shall comply with all of the requirements of the Uniform Building Code.

D. Accessory structures excluding fences, pergolas, arbors, or trellises may not be located within the required front yard except as otherwise permitted in this chapter.

E. An accessory structure must maintain a minimum side and rear yard setback of 5 ft, except where other requirements of this title are more restrictive.

F. Alteration or modification of nonconforming accessory structures is subject to the provisions of Chapter 19.800 Nonconforming Uses and Development.

G. Pergolas, arbors, and trellises are permitted in yards in all residential zones.

### 19.502.2 Single-Family Residential Provisions

A. Residential accessory structures excluding pools, uncovered decks, and patios are subject to the following:

1. For lots 10,000 sq ft or less, the footprint of an accessory structure may not exceed 500 sq ft. For lots greater than 10,000 sq ft the footprint of an accessory building may not exceed 850 sq ft.
2. An accessory structure may not exceed 15 ft in height as measured from the average finished grade within a 10-ft horizontal distance from the base of the building to the highest point of the roof.
3. Flat roofs and shed roofs are prohibited on accessory structures that have a floor-to-ceiling height greater than 9 ft.
4. The minimum roof pitch for accessory structures with other than a flat or shed roof is 4 in rise for every 12 in of run.
5. The placement of fill to raise grade elevations that has the effect of exceeding building height limitations is prohibited.

6. Metal siding is prohibited on accessory structures with a footprint greater than 120 sq ft. For accessory structures greater than 120 sq ft, exterior siding and roofing materials that are commonly used on residential structures shall be used.

B. Fences, walls, and plantings may be constructed or maintained in yards with the following limitations:

1. Fences, walls, and plantings shall be constructed or maintained in yards only so as to permit unobstructed vision of passenger vehicle operations when approaching intersecting streets or driveways. Fences, walls, and plantings shall meet clear vision standards provided in Chapter 12.24. Fences and walls on lot perimeters in areas other than those obstructing the vision of passenger vehicle operators shall be constructed or maintained to the following standards:

a. Residential Zones and Residential Uses in All Zones

Maximum height is 6 ft for rear, street side, and side yards; 42 in for front yards, except that for flag lots fences in the front yard may be 6 ft. No electrified, barbed, or razor wire fencing is permitted.

b. Commercial Zones

Maximum height 6 ft. No electrified wire is permitted. Barbed or razor wire may be permitted for security purposes on top of a maximum height fence, following a Type II review per Section 19.1005 in which a determination has been made that the proposed fencing will not adversely impact the health, safety, or welfare of adjacent property occupants. All outdoor storage shall require a 6-ft-high sight-obscuring fence.

c. Industrial Zones

Maximum height 8 ft. No electrified wire is permitted. Barbed or razor wire may be permitted for security purposes on top of a maximum height fence, except where such fencing is proposed adjacent to residential zones or residential uses, in which case such may be allowed following a Type II review per Section 19.1005 in which a determination has been made that the proposed fencing will not adversely impact the health, safety, or welfare of adjacent property occupants. All outdoor storage shall require a sight-obscuring fence with a minimum height of 6 ft.

2. In all cases, fence and wall height shall be measured from the top of the fence or wall to the highest ground level within a 1-ft horizontal distance from the fence.

C. Regardless of the yard requirements of the zone, a side, rear, or front yard may be reduced to 3 ft for an uncovered patio, deck, or swimming pool not exceeding 18 in. in height above the average grade of the adjoining ground (finished elevation).

## 19.503 ACCESSORY USES

### 19.503.1 General Provisions

Accessory uses shall comply with all requirements for the principal use except where specifically modified by this chapter and shall comply with the following limitations:

A. A guesthouse without kitchen facilities may be maintained accessory to a dwelling.

B. A greenhouse or hothouse may be maintained accessory to a dwelling provided nothing grown is sold on the premises.

C. Keeping of livestock or poultry shall be in buildings that fully comply with building and sanitary codes. The keeping of chickens or other domestic or domesticated fowl shall not exceed 50 in number and shall require the written consent of all owners of real property (or a part thereof) within 100 ft of any point on the boundary of the property on which the chickens or domesticated fowl are proposed to be kept.

D. Keeping of colonies of bees shall be prohibited except that the Planning Commission may approve an application to keep not more than 2 colonies of bees whenever such application is accompanied by the written consent of all the owners of real property (or a part thereof) within 100 ft of any point on the boundary of the property on which the bees are proposed to be kept.

E. Amateur and CB radio equipment and operations shall be considered an accessory use. Radio and television structures or towers outside of dwellings shall be subject to building regulations. Such structures and towers shall conform to height, yard, and other standards of the Zoning Ordinance. Any deviation from these standards will require a variance by the Planning Commission. Operational characteristics and limitations of such equipment shall be as established and administered by the FCC.

## 19.504 SITE DESIGN STANDARDS

### 19.504.1 Clear Vision Areas

A clear vision area shall be maintained on the corners of all property at the intersection of 2 streets or a street and a railroad according to the provisions of the clear vision ordinance in Chapter 12.24.

### 19.504.2 Maintenance of Minimum Ordinance Requirements

No lot area, yard, other open space, or off-street parking or loading area shall be reduced by conveyance or otherwise below the minimum requirements of this title, except by dedication or conveyance for a public use.

### 19.504.3 Dual Use of Required Open Space

No lot area, yard, or other open space or off-street parking or loading area which is required by this title for one use shall be used to meet the required lot area, yard, or other open space or off-street parking area for another use, except as provided in Subsection 19.605.4.

### 19.504.4 Buildings on the Same Lot

A minimum distance of 6 ft as measured between the closest points of the structures shall be maintained between a building designed for dwelling purposes and other buildings on the same lot. In R-10, R-7, R-5, and R-3 Zones, only 1 building designed for dwelling purposes shall be permitted per lot.

### 19.504.5 Distance from Property Line

Where a side or rear yard is not required and a structure is not to be erected at the property line, it shall be set back at least 3 ft from the property line.

### 19.504.6 Transition Area Measures

Where multifamily, commercial, or industrial development is proposed adjacent to properties zoned for lower-density residential uses, the following transition measures shall be required. These additional requirements are intended to minimize impacts on lower-density residential uses. The downtown zones are exempt from this subsection.

A. All yards that abut, or are adjacent across a right-of-way from, a lower-density zone shall be at least as wide as the required front yard width of the adjacent lower-density zone. This additional yard requirement shall supersede the base zone yard requirements for the development property where applicable.

B. All yards that abut, or are adjacent across a right-of-way from, a lower-density zone shall be maintained as open space. Natural vegetation, landscaping, or fencing shall be provided to the 6-ft level to screen lower-density residential uses from direct view across the open space.

### 19.504.7 Minimum Vegetation

In the vegetation area a maximum of area shall be for planting and a minimum for bark dust. Plans for development shall include landscaping plans which shall be reviewed for conformance to this standard.

### 19.504.8 Multifamily Recycling Requirements

A. Purpose

This subsection is intended to promote recycling and to meet requirements of ORS 459.165, which requires local jurisdictions to provide opportunities for recycling, and ORS Chapter 90, which requires landlords to provide a location in multifamily residential dwelling projects for recycling.

B. Definition

For the purposes of this subsection, the following definition shall apply:

"Recycling collection area" means a specific location where recyclable materials may be deposited and contained for regular collection by a material collection service.

C. Applicability

All new multifamily apartment and condominium dwelling projects, and projects proposing unit expansion to existing multifamily apartment and condominium dwellings, must provide area(s) for recycling collection subject to the standards herein.

D. Recycling Collection Area Standards

Standards for recycling collection areas are as follows:

1. The recycling collection area must provide containers to accept the following recyclable materials: glass, newspaper, corrugated cardboard, tin, and aluminum.
2. The recycling collection area must be located at least as close to the dwelling units as the closest garbage collection/container area.
3. Recycling containers must be covered either by roof or weatherproof lids.
4. If located outdoors, the recycling collection area must be screened from the street and adjacent properties by sight-obscuring materials.
5. The recycling collection area(s) must have a collection capacity of at least 100 cu ft in size for every 10 dwelling units or portion thereof.
6. The recycling collection area must be easily accessible to collection service personnel between the hours of 6:00 a.m. and 6:00 p.m.

7. The recycling collection area and containers must be clearly labeled, to indicate the type and location of materials accepted, and properly maintained to ensure continued use by tenants.
8. City Fire Department approval will be required for all recycling collection areas.
9. Review and comment for all recycling collection areas will be required from the appropriate franchise collection service.

E. Review of recycling collection areas for new multifamily dwelling projects that require conditional use approval shall be made by the Planning Commission following the procedures of Section 19.1006 Type III Review.

F. Review of recycling collection areas for new multifamily projects that are permitted outright shall be made at the time of project building permit review following the procedures of Section 19.1004 Type I Review.

**19.504.9 Flag Lot Design and Development Standards**

A. Applicability

Flag lots in all zones are subject to the development standards of this subsection.

B. Development Standards

1. Lot Area Calculation

The areas contained within the accessway or pole portion of the lot shall not be counted toward meeting the minimum lot area requirement.

2. Yard Setbacks for Flag Lots

a. Front and rear yard: The minimum front and rear yard requirement for flag lots is 30 ft.

b. Side yard. The minimum side yard for principal and accessory structures in flag lots is 10 ft.

C. Variances Prohibited

Variances of lot area, lot width, and lot depth standards are prohibited for flag lots.

D. Frontage, Accessway, and Driveway Design

1. Flag lots shall have frontage and access on a public street. The minimum width of the accessway and street frontage is 25 ft. The accessway is the pole portion of the lot that provides access to the flag portion of the lot.
2. Abutting flag lots shall have a combined frontage and accessway of 35 ft. For abutting accessways of 2 or more flag lots, the accessway of any individual lot shall not be less than 15 ft.
3. Driveway Design and Emergency Vehicle Access

a. Driveways shall be designed and constructed in accordance with Chapters 12.16 and 12.24 and the Public Works Standards.

b. Driveways serving single flag lots shall have a minimum paved width of 12 ft.

c. Driveways shall be centered within the accessway to minimize impacts on adjoining lots except when otherwise warranted to preserve existing vegetation or meet the intent of this subsection.

d. A paved turnaround area, or other provisions intended to provide emergency vehicle access and adequate maneuvering area, may be required.

e. Driveways serving 2 flag lots shall be consolidated and have a minimum shared driveway width of 16 ft.

f. The flag lot driveway shall be consolidated with the driveway on the parent lot to the greatest extent practicable.

g. Design standards for shared driveways serving more than 3 lots shall be specified by the Engineering Director after consultation with the Fire Marshal.

h. Parking along any portion of the driveway within the accessway is prohibited unless the driveway is suitably sized to meet the combined needs of parking and emergency access requirements.

E. Protection of Adjoining Properties

Flag lots must be screened in accordance with this subsection to minimize potential adverse impacts to abutting properties. Fencing and screening must conform to the clear vision standards of Chapter 12.24. Fencing shall conform to the standards of Subsection 19.502.2.B.

1. Planting and screening must be provided at the time of development. Installation of required screening and planting is required prior to final inspections and occupancy of the site unless a bond or other surety acceptable to the City Attorney is provided. Screening and landscaping shall be installed within 6 months thereafter or the bond will be foreclosed. The property owner shall maintain required screening and planting in good and healthy condition. The requirement to maintain required screening and planting is continuous.

2. Impacts to neighboring lots due to use of the flag lot driveway shall be mitigated to the greatest extent practicable through screening and planting. Continuous screening along the flag lot driveway abutting any neighboring lot that is not part of the parent lot from which the flag lot was created is required as follows:

   a. Any combination of dense plantings of trees and shrubs and fencing that will provide continuous sight obstruction for the benefit of adjoining properties within 3 years of planting is allowed.

   b. Fencing along an accessway may not be located nearer to the street than the front building line of the house located on lots that abut the flag lot accessway. Dense planting shall be used to provide screening along the accessway in areas where fencing is not permitted.

   c. All required screening and planting shall be maintained and preserved to ensure continuous protection against potential adverse impacts to adjoining property owners.

F. Tree Mitigation

All trees 6 in or greater in diameter, as measured at the lowest limb or 4 ft above the ground, whichever is less, shall be preserved. Where trees are required to be removed for site development, at least 1 evergreen or deciduous tree, of a species known to grow in the region, shall be replanted for each tree removed. At planting, deciduous trees shall be a minimum of 2 in caliper and evergreen trees shall be a minimum of 5 ft tall.

G. Landscaping Plan Required

A landscaping plan shall be submitted to the Planning Director prior to issuance of a building permit for new construction. The plan shall be drawn to scale and shall accompany development permit applications. The plan shall show the following information:

1. A list of existing vegetation by type, including number, size, and species of trees.
2. Details for protections of existing trees.
3. List of existing natural features.
4. Location and space of existing and proposed plant materials.
5. List of plant material types by botanical and common names.
6. Notation of trees to be removed.
7. Size and quantity of plant materials.
8. Location of structures on adjoining lots, and location of windows, doors, and outdoor use areas on lots that adjoin the flag lot driveway.

**19.504.10 On-Site Walkways and Circulation**

A. Requirement

All development subject to Chapter 19.700 (excluding single-family residential development) shall provide a system of walkways that encourages safe and convenient pedestrian movement within and through the development site. Redevelopment projects that involve remodeling or changes in use shall be brought closer into conformance with this requirement to the greatest extent practicable. On-site walkways shall link the site with the public street sidewalk system. Walkways are required between parts of a site where the public is invited to walk. Walkways are not required between buildings or portions of a site that are not intended or likely to be used by pedestrians, such as truck loading docks and warehouses.

B. Location

A walkway into the site shall be provided for every 300 ft of street frontage.

C. Connections

Walkways shall connect building entrances to one another and building entrances to adjacent public streets and existing or planned transit stops. On-site walkways shall connect with walkways, sidewalks, bicycle facilities, alleys, and other bicycle or pedestrian connections on adjacent properties used or planned for commercial, multifamily, institutional, or park use. The City may require connections to be constructed and extended to the property line at the time of development.

D. Routing

Walkways shall be reasonably direct. Driveway crossings shall be minimized. Internal parking lot circulation and design shall provide reasonably direct access for pedestrians from streets and transit stops to primary buildings on the site.

E. Design Standards

Walkways shall be constructed with a hard surface material and shall be no less than 5 ft in width. If adjacent to a parking area where vehicles will overhang the walkway, a 7-ft-wide walkway shall be provided. The walkways shall be separated from parking areas and

internal driveways using curbing, landscaping, or distinctive paving materials. On-site walkways shall be lighted to an average 5/10-footcandle level. Stairs or ramps shall be provided where necessary to provide a direct route.

### 19.504.11 Setbacks Adjacent to Transit

The following requirement applies to all new multifamily, commercial, office, and institutional development within 500 ft of an existing or planned transit route measured along the public sidewalk that provides direct access to the transit route:

When adjacent to a street served by transit, new commercial, office, or institutional development, including uses authorized under Section 19.904 Community Service Uses, shall be set back no more than 30 ft from the right-of-way that is providing transit service.

A. An individual building may be set back more than 30 ft, provided the building is part of an approved phased development that will result in a future building(s) that complies with the 30-ft setback standard.

B. For sites with multiple buildings, the maximum distance from a street with transit to a public entrance of the primary building shall be no more than 100 ft.

C. If the proposed building is part of an institutional campus, the Planning Director may allow flexibility in the setback and orientation of the building. As a trade-off for this flexibility, enhanced sidewalk connections shall be provided between the institutional building(s) and nearby transit stops.

D. If the site abuts more than 1 street served by transit, then the maximum setback requirement need only apply to 1 street.

## 19.505 BUILDING DESIGN STANDARDS

### 19.505.1 Design Standards for Single-Family Dwellings

A. All new single-family attached and detached dwelling units shall meet the following design standards:

1. The main entrance of the dwelling shall be oriented to the street upon which the lot fronts or which provides vehicle access. The main entrance shall be considered to be oriented to the street if the front door faces the street or if the front door leads to a porch, patio, or sidewalk that is located in the front yard.
2. The area of windows on all exterior wall elevation(s) facing the street shall be at least 12% of the area of those elevations. Roofs, including gable ends, shall not be included in wall area.

B. All dwellings, except temporary dwellings approved in accordance with this chapter, shall include at least 3 of the following features on any building elevation that faces, or is visible to, the street (if on a corner lot, visible to the street where the dwelling takes access). Manufactured homes are subject to additional requirements of this chapter:

1. Covered porch at least 5 ft deep.
2. Entry area recessed at least 2 ft from the exterior wall to the door.
3. Bay or bow window that projects at least 1 ft from exterior wall.
4. Offset on the building face of at least 16 in from 1 exterior wall surface to the other.
5. Dormer.

6. Roof eaves with a minimum projection of 12 in from the intersection of the roof and the exterior walls.
7. Roof line offsets of at least 16 in from the top surface of one roof to the top surface of the other.
8. Attached garage.
9. Cupola.
10. Tile or wood shingle roofs.
11. Horizontal lap siding.
12. Brick covering at least 40% of the building elevation that is visible from the street.

### 19.505.2 Building Orientation to Transit

The following requirement applies to all new multifamily, commercial, office, and institutional development within 500 ft of an existing or planned transit route measured along the public sidewalk that provides direct access to the transit route:

New buildings shall have their primary orientation toward a transit street or, if not adjacent to a transit street, a public right-of-way which leads to a transit street. The primary building entrance shall be visible from the street and shall be directly accessible from a sidewalk connected to the public right-of-way. A building may have more than 1 entrance. If the development has frontage on more than 1 transit street, the primary building entrance may be oriented to either street or to the corner.

## 19.506 MANUFACTURED DWELLING SITING AND DESIGN STANDARDS

### 19.506.1 Purpose

This section is intended to meet State legislative requirements for the placement and design of manufactured homes on individual lots.

### 19.506.2 Applicability

Manufactured homes placed on individual lots are subject to the provisions of this section.

### 19.506.3 Definition

For the purposes of this section, the following definition shall apply:

"Manufactured home" means a single-family residential structure as defined in ORS 446.003(25)(a)(C) which includes a Department of Housing and Urban Development (HUD) label certifying that the structure is constructed in accordance with the Manufactured Housing Construction and Safety Standards of 1974 (42 USC Sections 5401 et seq.) as amended on August 22, 1981.

### 19.506.4 Siting Standards

Manufactured homes are allowed outright in any zone that allows single-family detached dwellings outright. Manufactured homes placed on individual lots shall meet the following standards:

A. The unit shall be multisectional (double-wide or wider) and enclose a floor area of not less than 1,000 sq ft.

B. The unit shall be placed on an excavated and backfilled foundation with the bottom no more than 12 in above grade and enclosed at the perimeter by skirting of pressure treated wood,

masonry, or concrete wall construction and complying with the minimum setup standards of the adopted State Administrative Rules for Manufactured Dwellings, Chapter 918.

C. The unit shall have a roof with a pitch of at least 3 in rise for every 12 in of run.

D. The unit shall have a garage or carport constructed with exterior siding and roofing which, in color, materials, and appearance, matches the manufactured home. The Planning Director may, at the time of placement permit application, require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

E. The unit shall have exterior siding and roofing which, in color, materials, and appearance, is similar to the exterior siding and roofing material commonly in use on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the Planning Director. Materials that shall not be allowed include bare metal siding or roofing.

F. The unit shall comply with the definition for manufactured home as identified in this section.

G. The unit shall comply with single-family parking and paving standards as described in Chapter 19.600.

### 19.506.5 Implementation of Siting Standards

A. For unit placement on an individual lot within all residential zones, the siting standards shall be administered as part of the building permit process for the unit placement.

B. Manufactured home placement as authorized by the temporary structure permit process of Subsection 19.910.4 is not subject to the siting standards of this section.

### 19.506.6 Occupancy

Manufactured homes placed on individual lots shall comply with all siting standards of Subsection 19.506.4 before being approved for occupancy.

## 19.507 HOME OCCUPATION STANDARDS

It is the intent of these regulations to support and encourage home occupations but at the same time protect the residential character of the City's residential neighborhoods. A home occupation shall be allowed as an accessory use to all residential uses permitted by right, subject to the following restrictions. Home occupation businesses, which are not clearly accessory and incidental to the residential use, are prohibited. All activities permitted under this section must be consistent with this section.

### 19.507.1 Home Occupation Use Standards

Home occupation uses are allowed by right; however, they are subject to limitations to ensure compatibility with residential uses. A home occupation shall:

A. Be incidental and accessory to the residential use of the property.

B. Maintain the residential character of the building and premises.

C. Not have the outward appearance of a business.

D. Not detract from the residential character of the neighborhood.

E. Be owned and operated by an occupant of the dwelling.

### 19.507.2 Prohibitions and Use Restrictions

A. Outside display or storage of merchandise, materials, or equipment on the premises or any adjacent right-of-way is prohibited.

B. Noise, odor, smoke, gases, vibration, heat, or glare that is detectable beyond the limits of the property is prohibited.

C. In the case of on-premises instruction, no more than 5 enrollees shall be present at the same time.

D. Motor vehicle, boat, or trailer repair is prohibited as a home occupation.

E. Only 1 home occupation is allowed per residence, except that 2 may be permitted provided no employees not residing in the home are engaged in the conduct of any business activity on the premises.

### 19.507.3 Permitted Signage

Only 1 sign is permitted on any property with an approved home occupation. The sign shall not exceed 4 sq ft in area, shall not be illuminated, shall not exceed 3 ft in height, and shall not be located within the public right-of-way. Signs located within the public right-of-way may be removed by the City without prior notice.

### 19.507.4 Enforcement

Home occupations are allowed when consistent with provisions of this section. The following may be considered in any enforcement action against a home occupation for failure to comply with Subsection 19.507.1 of this section:

A. Number of on-site employees who are not members of the family residing on the premises.

B. Use of the home to distribute or receive goods.

C. Use of the premises for parking of customer, client, or employee vehicles, and the location and number of parking spaces.

D. The use of public streets for parking or storage.

E. The time of day that home occupation activities may take place.

F. Equipment or material storage, including vehicles and trailers.

G. Noise, light, fumes, exhaust, and similar impacts.

# CHAPTER 19.600

# OFF-STREET PARKING AND LOADING

SECTIONS:

19.601 Purpose
19.602 Applicability
19.603 Review Process and Submittal Requirements
19.604 General Parking Standards
19.605 Vehicle Parking Quantity Requirements
19.606 Parking Area Design and Landscaping
19.607 Off-Street Parking Standards for Residential Areas
19.608 Loading
19.609 Bicycle Parking
19.610 Carpool and Vanpool Parking
19.611 Parking Structures

## 19.601 PURPOSE

Chapter 19.600 regulates off-street parking and loading areas on private property outside the public right-of-way. The purpose of Chapter 19.600 is to: provide adequate, but not excessive, space for off-street parking; avoid parking-related congestion on the streets; avoid unnecessary conflicts between vehicles, bicycles, and pedestrians; encourage bicycling, transit, and carpooling; minimize parking impacts to adjacent properties; improve the appearance of parking areas; and minimize environmental impacts of parking areas.

Regulations governing the provision of on-street parking within the right-of-way are contained in Chapter 19.700 and the Milwaukie Downtown and Riverfront Plan Public Area Requirements, which is an ancillary document to the Comprehensive Plan. The management of on-street parking is governed by Chapter 10.20. Chapter 19.600 does not enforce compliance with the American's with Disabilities Act (ADA). ADA compliance on private property is reviewed and enforced by the Building Official.

## 19.602 APPLICABILITY

### 19.602.1 General Applicability

The regulations of Chapter 19.600 apply to all off-street parking areas and off-street loading areas, whether required by the City as part of development or a change in use, per Subsection 19.602.3, or voluntarily installed for the convenience of users, per Subsection 19.602.4. Activity that is not described by Subsections 19.602.3 or 4 is exempt from compliance with the provisions of Chapter 19.600. Changes to nonconforming off-street parking and loading are addressed through Chapter 19.600 and not through the provisions of Chapter 19.800.

### 19.602.2 Maintenance Applicability

Property owners shall comply with the regulations of Chapter 19.600 by ensuring conformance with the standards of Chapter 19.600 related to ongoing maintenance, operations, and use of off-street parking and loading areas. Changes to existing off-street parking or loading areas that bring the area out of conformance with Chapter 19.600, or further out of conformance if already nonconforming, are prohibited.

### 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 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.

B. Existing off-street parking and loading areas shall be brought closer into conformance with the standards of Chapter 19.600, per Subsection 19.602.5, when the following types of development or change in use occur:

   1. Development that results in an increase of less than 100% of the existing floor area and/or structure footprint.

   2. Changes of use, as defined in Section 19.201.

### 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. 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.

### 19.602.5 Improvements to Existing Off-Street Parking and Loading Areas

A. Purpose

   The purpose of Subsection 19.602.5 is to improve nonconforming off-street parking and loading areas as redevelopment occurs. These improvements should occur in conjunction with a development or change in use.

B. Limitations on Required Improvements

   The cost of materials for any required improvements shall not exceed 10% of the development permit value of the associated development, redevelopment, and/or tenant improvements associated with a change in use. The cost of capital equipment such as manufacturing or operational equipment is exempt from the building permit value for purposes of this regulation. This exemption does not include building infrastructure such as electrical, plumbing, heating, venting, or air conditioning equipment.

C. Areas of Required Improvement

   The Planning Director will evaluate the applicant's parking plan and use the prioritized list below when determining what improvements will be required.

   1. Paving and striping of parking areas, per Subsection 19.606.3.A.

   2. Minimum required vehicle parking spaces, per Section 19.605.

3. Minimum required bicycle parking spaces, per Section 19.609.
4. Landscaping of existing buffers, islands, and medians, per Subsection 19.606.2.D.
5. New perimeter landscape buffers, islands, and medians, as applicable, per Subsection 19.606.2.E.
6. Other applicable standards within Chapter 19.600, as determined by the Planning Director.

## 19.603 REVIEW PROCESS AND SUBMITTAL REQUIREMENTS

### 19.603.1 Review Process

The Planning Director shall apply the provisions of Chapter 19.600 in reviewing all land use and development permit applications, except when an application is subject to a quasi-judicial land use review or appeal, in which case the body reviewing the application or appeal has the authority to implement and interpret the provisions of Chapter 19.600.

### 19.603.2 Submittal Requirements

Except for single-family dwellings, a development or change in use subject to Chapter 19.600 as per Section 19.602 shall submit a parking plan, drawn to scale. The parking plan shall show that all applicable standards are met, and shall include but not be limited to the items listed below, unless waived by the Planning Director.

A. Delineation of individual spaces and wheel stops.
B. Drive aisles necessary to serve spaces.
C Accessways, including driveways and driveway approaches, to streets, alleys, and properties to be served.
D. Pedestrian pathways and circulation.
E. Bicycle parking areas and rack specifications.
F. Fencing.
G. Abutting land uses.
H. Grading, drainage, surfacing, and subgrading details.
I. Location and design of lighting fixtures and levels of illumination.
J. Delineation of existing and proposed structures.
K. Parking and loading area signage.
L. Landscaping, including the following information.
    1. The location and area of existing and proposed trees, vegetation, and plant materials, including details about the number, size, and species of such items.
    2. Notation of the trees, plants, and vegetation to be removed, and protection measures for existing trees and plants to be preserved.

## 19.604 GENERAL PARKING STANDARDS

### 19.604.1 Parking Provided with Development Activity

All required off-street parking areas shall be provided at the time the structure is built; at the time a structure or site is enlarged; or when there is change in use or an increase in density or

intensity. All required off-street parking areas shall be provided in conformance with the standards of Chapter 19.600 prior to issuance of a certificate of occupancy, or final development permit approval, or as otherwise specified in any applicable land use decision.

### 19.604.2 Parking Area Location

Accessory parking shall be located in one or more of the following areas:

A. On the same site as the primary use for which the parking is accessory.

B. On a site owned by the same entity as the site containing the primary use that meets the standards of Subsection 19.605.4.B.2. Accessory parking that is located in this manner shall not be considered a parking facility for purposes of the base zones in Chapter 19.300.

C. Where shared parking is approved in conformance with Subsection 19.605.4.

### 19.604.3 Use of Parking Areas

All required off-street parking areas shall continually be available for the parking of operable vehicles of intended users of the site. Required parking shall not be rented, leased, sold, or otherwise used for parking that is unrelated to the primary or accessory use of the site, except where a shared parking agreement per Subsection 19.605.4 has been recorded. Subsection 19.604.3 does not prohibit charging fees for parking when the parking serves the primary or accessory uses on site.

### 19.604.4 Storage Prohibited

No required off-street parking area shall be used for storage of equipment or materials, except as specifically authorized by Subsection 19.607.2 Commercial Vehicle, Pleasure Craft, and Recreational Vehicle Parking.

## 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 Subsection19.605.3 allows certain exemptions and reductions to these ratios based on location or on-site amenities. 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.

The Downtown Storefront (DS) Zone and the portion of the Downtown Office (DO) Zone north of Washington Street and east of McLoughlin Boulevard are exempt from the requirements of Section 19.605.

### 19.605.1 Minimum and Maximum Requirements

A. Development shall provide at least the minimum and not more than the maximum number of parking spaces as listed in Table 19.605.1. Modifications to the standards in Table 19.605.1 may be made as per Section 19.605. Where multiple ratios are listed, the Planning Director shall determine which ratio to apply to the proposed development or use.

B. When a specific use has not been proposed or identified at the time of permit review, the Planning Director may elect to assign a use category from Table 19.605.1 to determine the minimum required and maximum allowed parking. Future tenants or property owners are responsible for compliance with Chapter 19.600 per the applicability provisions of Section 19.602.

C. If a proposed use is not listed in Table 19.605.1, the Planning Director has the discretion to apply the quantity requirements of a similar use listed in the table upon finding that the

listed use and unlisted use have similar parking demands. If a similar use is not listed, the quantity requirements will be determined per Subsection 19.605.2.

D. Where the calculation of minimum parking spaces does not result in a whole number, the result shall be rounded down to the next whole number. Where the calculation of maximum parking spaces does not result in a whole number, the result shall be rounded to the nearest whole number.

E. Parking spaces for disabled persons, and other improvements related to parking, loading, and maneuvering for disabled persons, shall conform to the Americans with Disabilities Act and shall be subject to review and approval by the Building Official. Spaces reserved for disabled persons are included in the minimum required and maximum allowed number of off-street parking spaces.

F. Uses that have legally established parking areas that exceed the maximum number of spaces allowed by Section 19.605 prior to June 17, 2010, the effective date of Ordinance #2015, shall be considered nonconforming with respect to the quantity requirements. Such uses shall not be considered parking facilities as defined in Section 19.201.

**Table 19.605.1**
**Minimum To Maximum Off-Street Parking Requirements**

| Use | Minimum Required | Maximum Allowed |
|---|---|---|
| **A. Residential Uses** | | |
| 1. Single-family dwellings, including manufactured homes. | 1 space per dwelling unit. | No maximum. |
| 2. Multifamily dwellings containing 3 or more dwelling units (includes senior and retirement housing).<br>a. Dwelling units with 800 sq ft of floor area or less.<br>b. Dwelling units with more than 800 sq ft of floor area. | <br><br><br><br>1 space per dwelling unit.<br><br>1.25 spaces per dwelling unit. | <br><br><br><br>2 spaces per dwelling unit.<br><br>2 spaces per dwelling unit. |
| 3. Residential homes and similar facilities allowed outright in residential zones. | 1 space per dwelling unit plus 1 space per employee on the largest shift. | Minimum required parking plus 1 space per bedroom. |
| 4. Accessory dwelling units (ADU)—Types I and II. | Property containing an ADU and primary dwelling must have 2 spaces. | No maximum. |
| **B. Community Service and Other Public Uses** | | |
| 1. Religious institutions. | 1 space per 4 seats. | 1 space per 2 seats. |
| 2. Day-care center ("family day-care" as defined in Section 19.201 has no parking requirements). | 2 spaces per 1,000 sq ft of floor area. | 3.5 spaces per 1,000 sq ft of floor area. |

| Table 19.605.1 CONTINUED<br>Minimum To Maximum Off-Street Parking Requirements | | |
|---|---|---|
| **Use** | **Minimum Required** | **Maximum Allowed** |
| **B. Community Service and Other Public Uses CONTINUED** | | |
| 3. School—elementary or junior high. | 1 space per classroom. | 2 spaces per classroom. |
| 4. School—senior high. | 0.25 spaces per student, plus 1 space per staff. | 0.33 spaces per student, plus 1 space per staff. |
| 5. Meeting room, club, lodge, or association. | 5 spaces per 1,000 sq ft of floor area, or 1 space per 4 seats if seats are permanently installed. | 16.66 spaces per 1,000 sq ft of floor area, or 1 space per 3 seats if seats are permanently installed. |
| 6. Library, museum, art gallery. | 1 space per 1,000 sq ft of floor area. | 1.2 spaces per 1,000 sq ft of floor area. |
| 7. Nursing, convalescent, and extended-care facilities. | 1 space per 4 beds. | 1 space per 3 beds. |
| **C. Lodging Places** | | |
| 1. Motel, hotel, boarding house. | 1 space per lodging unit. | 1.5 spaces per lodging unit. |
| 2. Bed and breakfast establishments. | 1 space per lodging unit, plus 1 space for the permanent residence. | 1.5 spaces per lodging unit, plus 2 spaces for the permanent residence. |
| **D. Commercial Uses—Recreational** | | |
| 1. Indoor recreation, such as a health club, gym, bowling alley, arcade, etc. | 3 spaces for each 1,000 sq ft of floor area. | 5.5 spaces per 1,000 sq ft of floor area. |
| 2. Theater, auditorium, or stadium. | 1 space per 4 seats. | 1 space per 3 seats. |
| **E. Commercial Uses—Retail Goods** | | |
| 1. Eating and drinking establishments. | 4 spaces per 1,000 sq ft floor area. | 15 spaces per 1,000 sq ft of floor area. |
| 2. General retail—grocery stores, convenience stores, specialty retail and shops. | 2 spaces per 1,000 sq ft of floor area. | 5 spaces per 1,000 sq ft of floor area. |
| 3. Bulk retail—furniture and home furnishings, appliances, vehicles, building materials, and similar large items. | 1 space per 1,000 sq ft of floor area. | 3 spaces per 1,000 sq ft of floor area. |
| 4. Gas stations. | No minimum. | 1.25 spaces per 4 pumps. |
| **F. Commercial Uses—Services** | | |
| 1. General office, including banks. | 2 spaces per 1,000 sq ft of floor area. | 3.4 spaces per 1,000 sq ft of floor area. |
| 2. Medical/dental office (non-hospital), veterinary clinic. | 3.9 spaces per 1,000 sq ft of floor area. | 4.9 spaces per 1,000 sq ft of floor area. |
| 3. Personal services, such as a barbershop, beauty parlor, etc. | 4 spaces per 1,000 square floor area. | 5.4 spaces per 1,000 sq ft of floor area. |

| Table 19.605.1 CONTINUED<br>Minimum To Maximum Off-Street Parking Requirements | | |
|---|---|---|
| **Use** | **Minimum Required** | **Maximum Allowed** |
| **F. Commercial Uses—Services CONTINUED** | | |
| 4. Commercial services, such as dry cleaners and repair shops (does not include vehicle repair). | 2.8 spaces per 1,000 sq ft of floor area. | 5.1 spaces per 1,000 sq ft of floor area. |
| 5. Vehicle repair. | 2 spaces per 1,000 sq ft of floor area. | 2.5 spaces per 1,000 sq ft of floor area. |
| 6. Quick vehicle repair and servicing, such as oil change and tire shops. | 2 spaces per service bay. | 3 spaces per service bay. |
| 7. Mortuary/funeral home. | 1 space per 5 chapel or parlor seats. | 1 space per 3 chapel or parlor seats. |
| 8. Car wash. | No minimum. | 2 spaces per wash bay for self-service washes, or 2 spaces per 1,000 sq ft of floor area for full-service washes. |
| **G. Industrial Uses** | | |
| 1. Manufacturing. | 1 space per 1,000 sq ft of floor area. | 2 spaces per 1,000 sq ft of floor area. |
| 2. Storage, warehouse, wholesale establishment less than 150,000 sq ft. | 0.5 spaces per 1,000 sq ft of floor area. | 1 space per 1,000 sq ft of floor area. |
| 3. Storage, warehouse, wholesale establishment 150,000 sq ft or greater. | 0.3 spaces per 1,000 sq ft of floor area. | 0.4 spaces per 1,000 sq ft of floor area. |
| 4. Mini-warehouse; self-service storage. | 1 space per 45 storage units, plus 1 space per employee of the largest shift. | 1 space per 20 storage units, plus 1 space per employee of the largest shift. |

### 19.605.2 Quantity Modifications and Required Parking Determinations

Subsection 19.605.2 allows for the modification of minimum and maximum parking ratios from Table 19.605.1 as well as the determination of minimum and maximum parking requirements. Parking determinations shall be made when the proposed use is not listed in Table 19.605.1 and for developments with large parking demands.

A. Applicability

The procedures of Subsection 19.605.2 shall apply in the following situations:

1. If the proposed use is not listed in Table 19.605.1 and the quantity requirements for a similar listed use cannot be applied.
2. If the applicant seeks a modification from the minimum required or maximum allowed quantities as calculated per Table 19.605.1.

B. Application

Determination of parking ratios in situations listed above shall be reviewed as a Type II land use decision, per Section 19.1005 Type II Review. The application for a determination must include the following:

1. Describe the proposed uses of the site, including information about the size and types of the uses on site, and information about site users (employees, customers, etc.).
2. Identify factors specific to the proposed use and/or site, such as the proximity of transit, parking demand management programs, availability of shared parking, and/or special characteristics of the customer, client, employee or resident population that affect parking demand.
3. Provide data and analysis specified in Subsection 19.605.2.B.3 to support the determination request. The Planning Director may waive requirements of Subsection 19.605.2.B.3 if the information is not readily available or relevant, so long as sufficient documentation is provided to support the determination request.
    a. Analyze parking demand information from professional literature that is pertinent to the proposed development. Such information may include data or literature from the Institute of Transportation Engineers, American Planning Association, Urban Land Institute, or other similar organizations.
    b. Review parking standards for the proposed use or similar uses found in parking regulations from other jurisdictions.
    c. Present parking quantity and parking use data from existing developments that are similar to the proposed development. The information about the existing development and its parking demand shall include enough detail to evaluate similarities and differences between the existing development and the proposed development.
4. Propose a minimum and maximum parking ratio. For phased projects, and for projects where the tenant mix is unknown or subject to change, the applicant may propose a range (low and high number of parking spaces) for each development phase and both a minimum and maximum number of parking spaces to be provided at buildout of the project.
5. Address the approval criteria in Subsection 19.605.2.C.

C. Approval Criteria

The Planning Director shall consider the following criteria in deciding whether to approve the determination or modification. The Planning Director, based on the applicant's materials and other data the Planning Director deems relevant, shall set the minimum parking requirement and maximum parking allowed. Conditions of approval may be placed on the decision to ensure compliance with the parking determination.

1. All modifications and determinations must demonstrate that the proposed parking quantities are reasonable based on existing parking demand for similar use in other locations; parking quantity requirements for the use in other jurisdictions; and professional literature about the parking demands of the proposed use.

2. In addition to the criteria in Subsection 19.605.2.C.1, requests for modifications to decrease the amount of minimum required parking shall meet the following criteria:
   a. The use of transit, parking demand management programs, and/or special characteristics of the site users will reduce expected vehicle use and parking space demand for the proposed use or development, as compared with the standards in Table 19.605.1.
   b. The reduction of off-street parking will not adversely affect available on-street parking.
   c. The requested reduction is the smallest reduction needed based on the specific circumstances of the use and/or site.
3. In addition to the criteria in Subsection 19.605.2.C.1, requests for modifications to increase the amount of maximum allowed parking shall meet the following criteria:
   a. The proposed development has unique or unusual characteristics that create a higher-than-typical parking demand.
   b. The parking demand cannot be accommodated by shared or joint parking arrangements or by increasing the supply of spaces that are exempt from the maximum amount of parking allowed under Subsection 19.605.3.A.
   c. The requested increase is the smallest increase needed based on the specific circumstances of the use and/or site.

### 19.605.3 Exemptions and By-Right Reductions to Quantity Requirements

The following exemptions and by-right reductions cannot be used to further modify any parking modification or determination granted under Subsection 19.605.2.

A. Exemptions to Maximum Quantity Allowance

The following types of parking do not count toward the maximum amount of parking allowed on a site. This exemption applies only to the quantity requirements of Section 19.605 and not to the other requirements of Chapter 19.600. The City may impose conditions to ensure that parking spaces associated with these parking types are appropriately identified and used for the intended purpose.

1. Spaces for a parking facility.
2. Spaces for a transit facility or park and ride facility.
3. Storage or display areas for vehicle sales.
4. Employee carpool parking, when spaces are dedicated or reserved for that use.
5. Fleet parking.
6. Truck loading areas.

B. Reductions to Minimum Parking Requirements

Applicants are allowed to utilize multiple reductions from Subsections 19.605.3.B.2-7, provided that the total reduction in required parking does not exceed 25% of the minimum quantity requirement listed in Table 19.605.1. Applicants may not utilize the reduction in Subsection 19.605.3.B.1 in conjunction with any other reduction in Subsection 19.605.3.B.

1. Reductions for Neighborhood Commercial Areas

   The minimum parking requirements of Table 19.605.1 shall be reduced by 50% for the properties described below:

   a. Properties zoned Commercial Limited (C-L).

   b. Properties zoned Commercial Neighborhood (C-N).

   c. Properties in the Commercial General (C-G) Zone in the area bounded by 42nd Avenue, King Road, 40th Avenue, and Jackson Street.

   d. Properties in the Commercial General (C-G) Zone in the area bounded by 42nd Avenue, Harrison Street, 44th Avenue, and Jackson Street.

2. Proximity to Public Transit

   a. Parking for commercial and industrial uses may be reduced by up to 10% if the development is within 500-ft walking distance, as defined in Subsection 19.605.3.B.2.d, of a transit stop with a peak hour service frequency of 30 minutes or less.

   b. Parking for multifamily uses may be reduced by up to 20% if the development is within 500-ft walking distance, as defined in Subsection 19.605.3.B.2.d, of a transit stop with a peak hour service frequency of 30 minutes or less.

   c. Parking for all uses except single-family attached and detached dwellings may be reduced by 25% if the development is within 1,000-ft walking distance, as defined in Subsection 19.605.3.B.2.d, of a light rail transit stop.

   d. In determining walking distance, the applicant shall measure the shortest route along sidewalks, improved pedestrian ways, or streets if sidewalks or improved pedestrian ways are not present. Walking distance shall be measured along the shortest course from the point on the development site that is nearest to the transit stop.

3. Multitenant Commercial Sites

   Where multiple commercial uses occur on the same site, minimum parking requirements shall be calculated as described below. The Planning Director shall have the authority to determine when multiple uses exist on a site.

   a. Use with highest parking requirement. The use that has the largest total number of minimum parking spaces required shall be required to provide 100% of the minimum number of parking spaces.

   b. All other uses. All other uses on the site shall be required to provide 80% of the minimum number of parking spaces.

4. Carpool/Vanpool

   Commercial and industrial developments that provide at least 2 carpool/vanpool parking spaces may reduce the required number of parking spaces by up to 10%. This reduction may be taken whether the carpool/vanpool space is required pursuant to Section 19.610 or voluntarily provided.

5. Bicycle Parking

   The minimum amount of required parking for all non-single-family residential uses may be reduced by up to 10% for the provision of bicycle parking in addition to what is

required by Section 19.609. A reduction of 1 vehicle parking space is allowed for every 6 additional bicycle parking spaces installed. The bicycle spaces shall meet all other standards of Section 19.609. The area of an existing parking space in an off-street parking area may be converted to bicycle parking to utilize this reduction.

6. Car Sharing

   Required parking may be reduced by up to 5% if at least 1 off-street parking space is reserved for a vehicle that is part of a car sharing program. The car sharing program shall be sufficiently large enough, as determined by the Planning Director, to be accessible to persons throughout Milwaukie and its vicinity. The applicant must provide documentation from the car sharing program that the program will utilize the space provided.

7. Provision of Transit Facility Improvements

   The number of existing required parking spaces may be reduced by up to 10% for developments that provide facilities such as bus stops and pull-outs, bus shelters, or other transit-related facilities. A reduction of 1 parking space is allowed for each 100 sq ft of transit facility provided on the site.

**19.605.4 Shared Parking**

Some or all of a use's required parking spaces may be accommodated off-premises on the parking area of a different site through shared parking, pursuant to the standards of Subsection 19.605.4. The standards of Subsection 19.605.4 do not apply to voluntary shared parking agreements that are not created in order to conform to the quantity requirements of Section 19.605.

A. Review

   The Planning Director shall determine, in accordance with Section 19.1004 Type I Review, whether the shared parking standards are met. The Planning Director may require a nonconforming parking area be brought into conformance, or closer to conformance as per Subsection 19.602.5, before it may be used for shared parking.

B. Standards

   1. The applicant must demonstrate that the shared parking area has a sufficient quantity of spaces for the uses that will share the parking area. The Planning Director may require the applicant to provide data substantiating the claim that the proposed parking is sufficient for multiple uses during peak hours of demand for each use.

   2. The nearest parking spaces shall be no further than 1,000 ft from the principal structure(s) or use(s). The measurement shall be along a route that is adequately illuminated; has vertical or horizontal separation from travel lanes within the right-of-way; uses legal crosswalks for right-of-way crossing; and has an asphalt, concrete, or similar surface material. The applicant may propose to construct new facilities or modify existing facilities to comply with Subsection 19.605.4.B.2.

   3. Legal documentation between the property owners that guarantees access to the shared parking shall be recorded with the County. The documentation shall be reviewed and approved by the Planning Director prior to being recorded. The agreement shall run with the land and not be tied to property ownership. The agreement shall not be terminated without City approval. The request for terminating the agreement must demonstrate that the properties in the agreement and their uses will comply with the quantity requirements of Section 19.605 after dissolution of the

agreement. A copy of the recorded documentation shall be provided to the City prior to obtaining a building permit.

## 19.606 PARKING AREA DESIGN AND LANDSCAPING

The purpose of Section 19.606 is to ensure that off-street parking areas are safe, environmentally sound, aesthetically pleasing, and that they have efficient circulation. These standards apply to all types of development except for single-family attached dwellings, single-family detached dwellings, and residential homes.

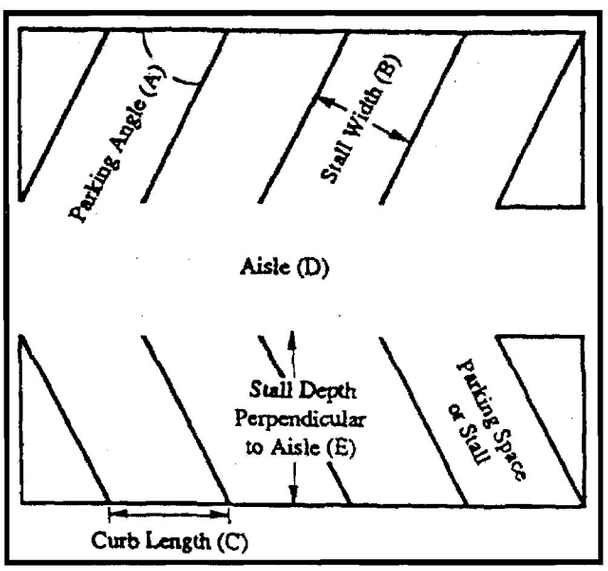
### 19.606.1 Parking Space and Aisle Dimensions

A. The dimensions for required off-street parking spaces and abutting drive aisles, where required, shall be no less than in Table 19.606.1. The minimum dimensions listed in Table 19.606.1 are illustrated in Figure 19.606.1.

**Table 19.606.1**
**Minimum Parking Space And Aisle Dimensions**

| Angle (A) | Width (B) | Curb Length (C) | 1-Way Aisle Width (D) | 2-Way Aisle Width (D) | Depth (E) |
|---|---|---|---|---|---|
| 0° (Parallel) | 8.5' | 22' | 12' | 19' | 8.5' |
| 30° | 9' | 17' | 12' | 19' | 16.5' |
| 45° | 9' | 12' | 13' | 19' | 18.5' |
| 60° | 9' | 10' | 17' | 19' | 19' |
| 90° | 9' | 9' | 22' | 22' | 18' |

**Figure 19.606.1**
**Parking Dimension Factors**




B. The dimension of vehicle parking spaces provided for disabled persons shall be according to federal and State requirements.

C. Parking spaces shall be provided with adequate aisles or turnaround areas so that all vehicles may enter the street in a forward manner.

D. Drive aisles shall be required in parking areas greater than 5 spaces. Drive aisles shall meet the minimum width standards of Subsection 19.606.1. Where a drive aisle or portion thereof does not abut a parking space(s), the minimum allowed width for a one-way drive aisle shall be 8 ft and the minimum allowed width for a two-way drive aisle shall be 16 ft.

**19.606.2 Landscaping**

A. Purpose

The purpose of the off-street parking lot landscaping standards is to provide vertical and horizontal buffering between parking areas and adjacent properties, break up large expanses of paved area, help delineate parking spaces and drive aisles, and provide environmental benefits such as stormwater management, carbon dioxide absorption, and a reduction of the urban heat island effect.

B. General Provisions

1. Parking area landscaping shall be required for the surface parking areas of all uses, except for single-family detached and single-family attached residences. Landscaping shall be based on the following standards in Subsections 19.606.2.C-H.
2. Landscaped areas required by Subsection 19.606.2 shall count toward the minimum amount of landscaped area required in other portions of Title 19.
3. Parking areas with 10 or fewer spaces in the Downtown Storefront Zone, and the portion of the Downtown Office Zone located to the north of Washington Street and east of McLoughlin Boulevard, are exempt from the requirements of Subsection 19.606.2.

C. Perimeter Landscaping

The perimeter landscaping of parking areas shall meet the following standards which are illustrated in Figure 19.606.2.C.

1. Dimensions

The minimum width of perimeter landscape areas are shown in Table 19.606.2.C.1. Where a curb provides the border for a perimeter landscape area, the dimension shall be measured from the inside of the curb(s). The Planning Director may reduce the required minimum width of a perimeter landscaping area where existing development or site constraints make it infeasible to provide drive aisles, parking spaces, and the perimeter landscaping buffer width listed in Table 19.606.2.C.1.

**Table 19.606.2.C.1**
**Minimum Perimeter Landscape Strip Dimensions**

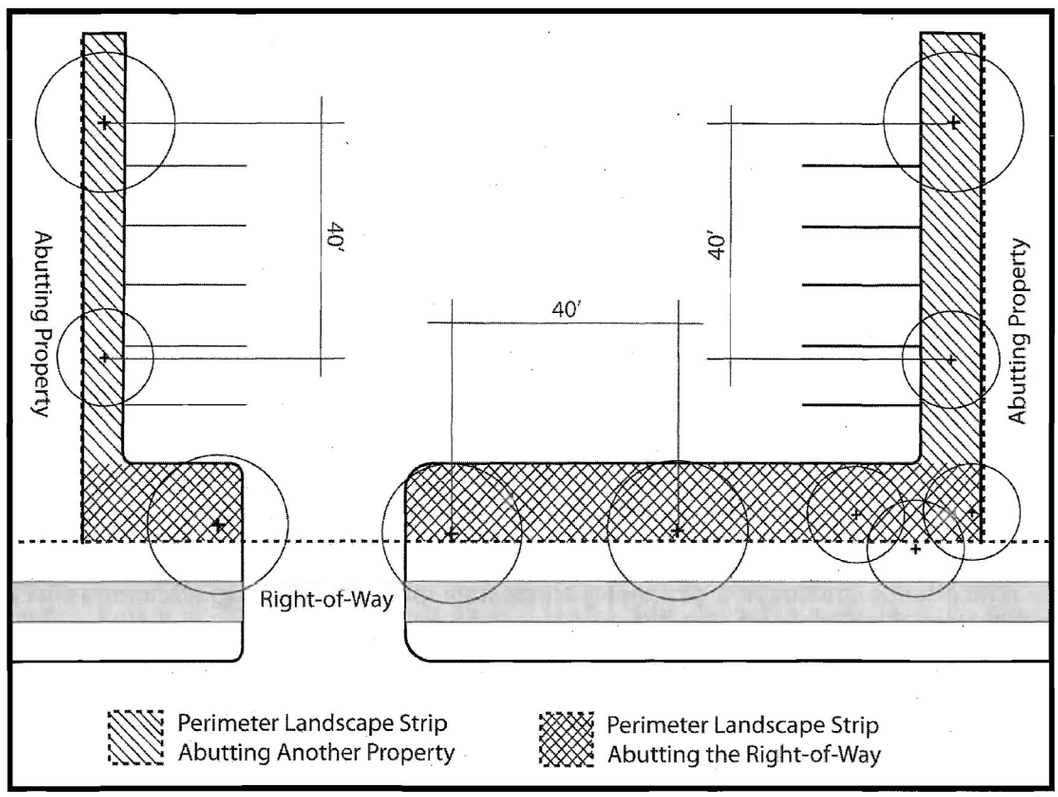
| Location | Downtown Zones | All Other Zones |
|---|---|---|
| Lot line abutting a right-of-way | 4' | 8' |
| Lot line abutting another property, except for abutting properties that share a parking area | 0' | 6' |

2. Planting Requirements

Landscaping requirements for perimeter buffer areas shall include 1 tree planted per 40 lineal ft of landscaped buffer area. Where the calculation of the number of trees does not result in a whole number, the result shall be rounded up to the next whole number. Trees shall be planted at evenly spaced intervals along the perimeter buffer to

the greatest extent practicable. The remainder of the buffer area shall be grass, ground cover, mulch, shrubs, trees, or other landscape treatment other than concrete and pavement.

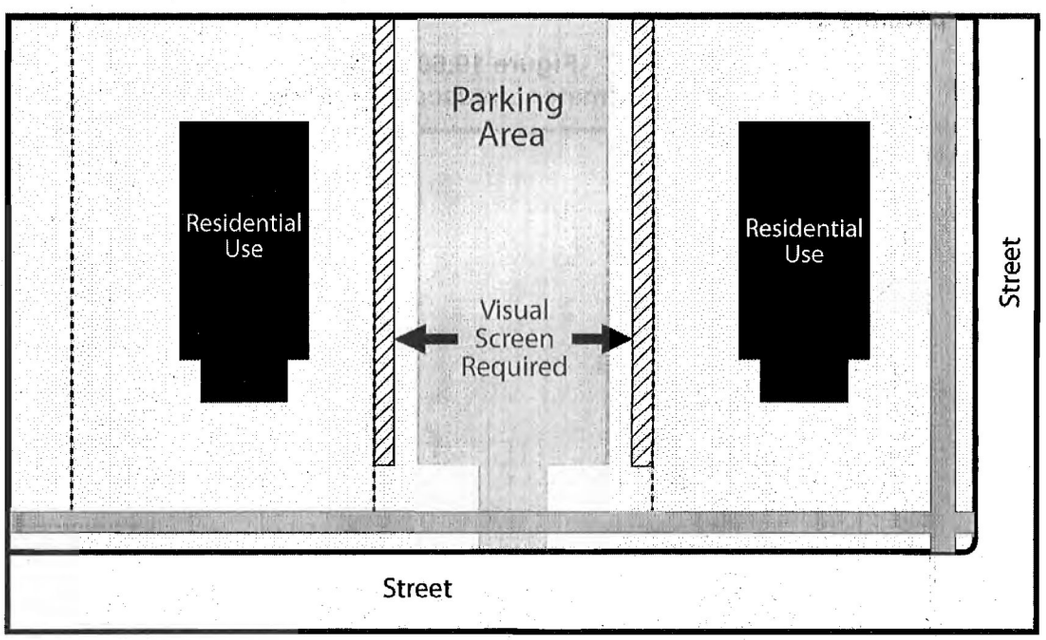
**Figure 19.606.2.C**
**Perimeter Landscaping Areas**




3. Additional Planting Requirements Adjacent to Residential Uses

In addition to the planting requirements of Subsection 19.606.2.D.2, all parking areas adjacent to a residential use shall have a continuous visual screen in the landscape perimeter area that abuts the residential use. The area of required screening is illustrated in Figure 19.606.2.C.3. The screen must be opaque throughout the year from 1 to 4 ft above ground to adequately screen vehicle lights. These standards must be met at the time of planting. Examples of acceptable visual screens are a fence or wall, an earth berm with plantings, and other plantings of trees and shrubs.

**Figure 19.606.2.C.3**
**Additional Planting Requirements Adjacent to Residential Uses**




D. Interior landscaping

The interior landscaping of parking areas shall meet the following standards which are illustrated in Figure 19.606.2.D.

1. General Requirements

   Interior landscaping of parking areas shall be provided for sites where there are more than 10 parking spaces on the entire site. Landscaping that is contiguous to a perimeter landscaping area and exceeds the minimum width required by Subsection 19.606.2.C.1 will be counted as interior landscaping if it meets all other requirements of Subsection 19.606.2.D.

2. Required Amount of Interior Landscaped Area

   At least 25 sq ft of interior landscaped area must be provided for each parking space. Planting areas must be at least 120 sq ft in area and dispersed throughout the parking area.

3. Location and Dimensions of Interior Landscaped Areas

   a. Interior landscaped area shall be either a divider median between opposing rows of parking, or a landscape island in the middle or at the end of a parking row.

   b. Interior landscaped areas must be a minimum of 6 ft in width. Where a curb provides the border for an interior landscape area, the dimension shall be measured from the inside of the curb(s).

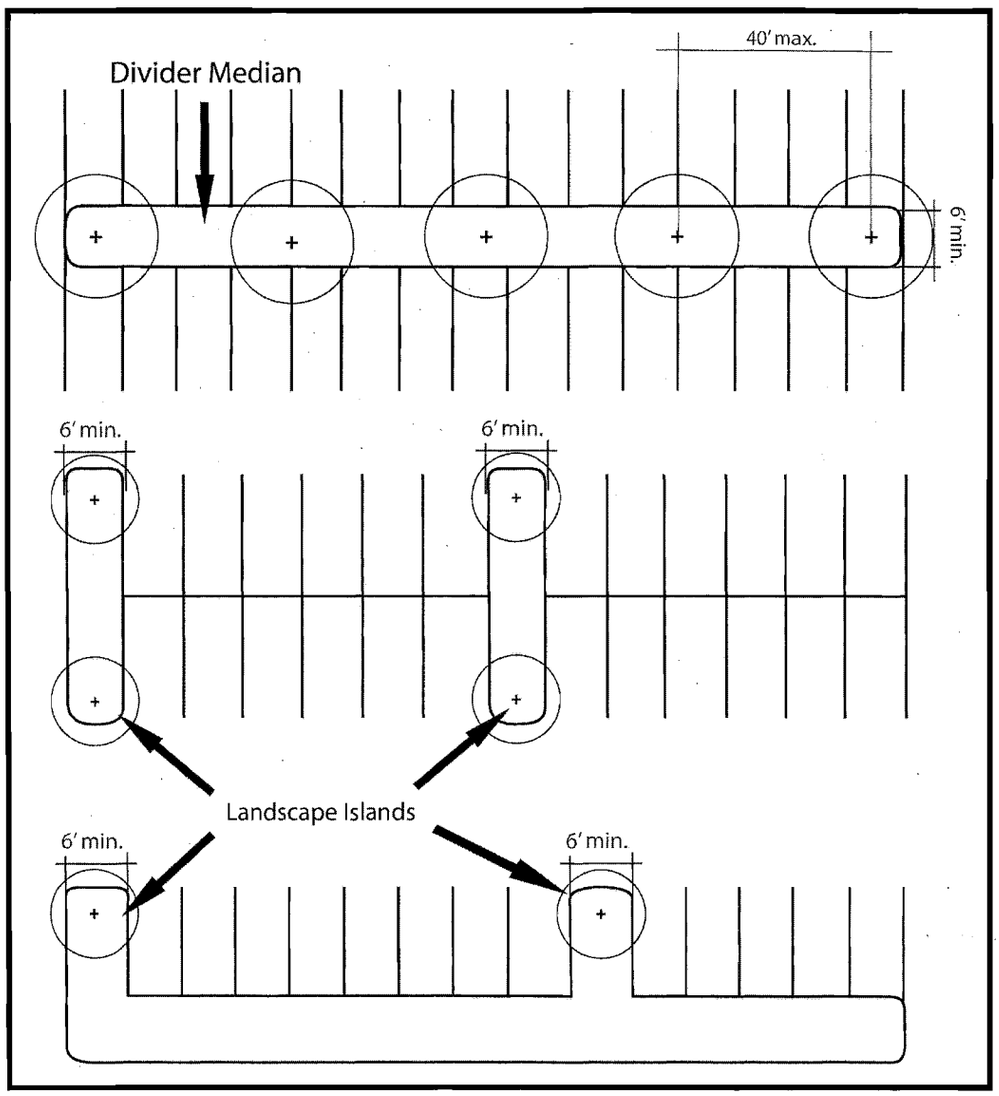
4. Planting Requirements for Interior Landscaped Areas

   a. For divider medians, at least 1 shade or canopy tree must be planted for every 40 linear ft. Where the calculation of the number of trees does not result in a whole number, the result shall be rounded up to the next whole number. Trees shall be planted at evenly spaced intervals to the greatest extent practicable.

b. For landscape islands, at least 1 tree shall be planted per island. If 2 interior islands are located contiguously, they may be combined and counted as 2 islands with 2 trees planted.

c. The remainder of any divider median or landscape island shall be grass, ground cover, mulch, shrubs, trees, or other landscape treatment other than concrete and pavement.

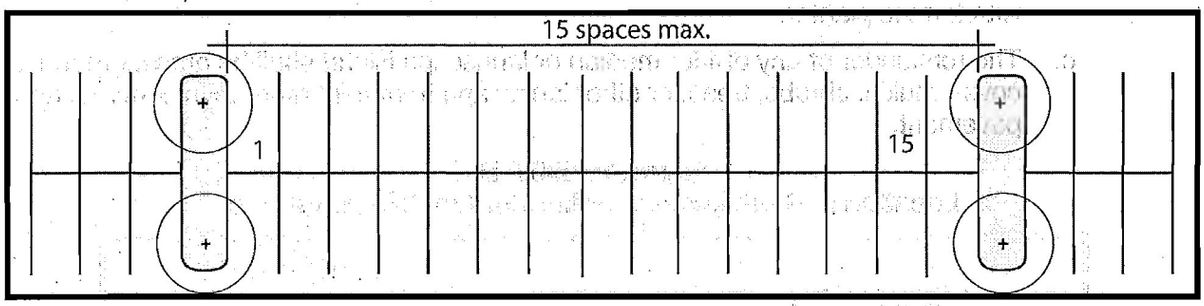
**Figure 19.606.2.D**
**Location and Dimensions of Interior Landscaped Areas**




5. Additional Landscaping for Large Parking Areas

Parking areas with more than 100 spaces on a site shall not have more than 15 spaces in a row without providing an interior landscaped island. See Figure 19.606.2.D.5.

**Figure 19.606.2.D.5**
**Additional Landscaping for Large Parking Areas**




E Other Parking Area Landscaping Provisions

1. Preservation of existing trees is encouraged in the off-street parking area and may be credited toward the total number of trees required, based on staff's review.
2. Installation of parking area landscaping shall be required before a certificate of occupancy is issued, unless a performance bond is posted with the City. Then landscaping shall be installed within 6 months thereafter or else the bond will be foreclosed and plant materials installed by the City.
3. Parking area landscaping shall be maintained in good and healthy condition.
4. Required parking landscaping areas may serve as stormwater management facilities for the site. The Engineering Director has the authority to review and approve the design of such areas for conformance with the Public Works Standards. This allowance does not exempt the off-street parking landscape area from meeting the design or planting standards of Subsection 19.606.2.
5. Pedestrian walkways are allowed within perimeter and interior landscape buffer if the landscape buffer is at least 2 ft wider than required in Subsections 19.606.2.C.1 and 19.606.2.D.3.b.

**19.606.3 Additional Design Standards**

A. Paving and Striping

Paving and striping are required for all required maneuvering and standing areas. Off-street parking areas shall have a durable and dust-free hard surface, shall be maintained for all-weather use, and shall be striped to show delineation of parking spaces and directional markings for driveways and accessways. Permeable paving surfaces may be used to reduce surface water runoff and protect water quality.

B. Wheel Stops

Parking bumpers or wheel stops, of a minimum 4-in height, shall be provided at parking spaces to prevent vehicles from encroaching on the street right-of-way, adjacent landscaped areas, or pedestrian walkways. Curbing may substitute for wheel stops if vehicles will not encroach into the minimum required width for landscape or pedestrian areas.

C. Site Access and Drive Aisles

1. Accessways to parking areas shall be the minimum number necessary to provide access while not inhibiting the safe circulation and carrying capacity of the street.

Driveway approaches shall comply with the access spacing standards of Chapter 12.16.

2. Drive aisles shall meet the dimensional requirements in Subsection 19.606.1.
3. Parking drive aisles shall align with the approved driveway access and shall not be wider than the approved driveway access within 10 ft of the right-of-way boundary.
4. Along collector and arterial streets, no parking space shall be located such that its maneuvering area is in an ingress or egress aisle within 20 ft of the back of the sidewalk, or from the right-of-way boundary where no sidewalk exists.
5. Driveways and on-site circulation shall be designed so that vehicles enter the right-of-way in a forward motion.

D. Pedestrian Access and Circulation

Subsection 19.504.10 establishes standards that are applicable to an entire property for on-site walkways and circulation. The purpose of Subsection 19.606.3.D is to provide safe and convenient pedestrian access routes specifically through off-street parking areas. Walkways required by Subsection 19.606.3.D are considered part of the on-site walkway and circulation system required by Subsection 19.504.10.

1. Pedestrian access shall be provided for off-street parking areas so that no parking space is further than 100 ft away, measured along vehicle drive aisles, from a building entrance, or a walkway that meets the standards of Subsection 19.606.3.D.2.
2. Walkways through off-street parking areas must be continuous, must lead to a building entrance, and meet the design standards of Subsection 19.504.10.E.

E. Internal Circulation

1. General Circulation

The Planning Director has the authority to review the pedestrian, bicycle, and vehicular circulation of the site and impose conditions to ensure safe and efficient on-site circulation. Such conditions may include, but are not limited to, on-site signage, pavement markings, addition or modification of curbs, and modifying drive aisle dimensions.

2. Connections to Adjacent Parking Areas

Where feasible, parking areas shall be designed to connect with parking areas on adjacent sites to eliminate the use of the street for cross movements.

3. Drive-Through Uses and Queuing Areas

The following standards apply to uses with drive-through services and uses such as gas stations and quick vehicle service facilities where vehicles queue rather than park on the site. The Planning Director has the authority to determine when the standards apply to a proposed use.

a. The drive-up/drive-through facility shall be along a building face that is oriented to an alley, driveway, or interior parking area, and shall not be on a building face oriented toward a street.

b. None of the drive-up, drive-in, or drive-through facilities (e.g., driveway queuing areas, windows, teller machines, service windows, kiosks, drop-boxes, or similar facilities) are located within 20 ft of the right-of-way.

c. Queuing areas shall be designed so that vehicles do not obstruct a driveway, fire access lane, walkway, or public right-of-way. Applicants may be required to submit additional information regarding the expected frequency and length of queues for a proposed use.

F. Lighting

Lighting is required for parking areas with more than 10 spaces. The Planning Director may require lighting for parking areas of less than 10 spaces if the parking area would not be safe due to the lack of lighting. Lighting shall be designed to enhance safe access for vehicles and pedestrians on the site, and shall meet the following standards:

1. Lighting luminaires shall have a cutoff angle of 90 degrees or greater to ensure that lighting is directed toward the parking surface.
2. Parking area lighting shall not cause a light trespass of more than 0.5 footcandles measured vertically at the boundaries of the site.
3. Pedestrian walkways and bicycle parking areas in off-street parking areas shall have a minimum illumination level of 0.5 footcandles, measured horizontally at the ground level.

## 19.607 OFF-STREET PARKING STANDARDS FOR RESIDENTIAL AREAS

### 19.607.1 Residential Driveways and Vehicle Parking Areas

Subsection 19.607.1 is intended to preserve residential neighborhood character by establishing off-street parking standards. The provisions of Subsection 19.607.1 apply to passenger vehicles and off-street parking areas for single-family attached dwellings, single-family detached dwellings, and residential homes in all zones.

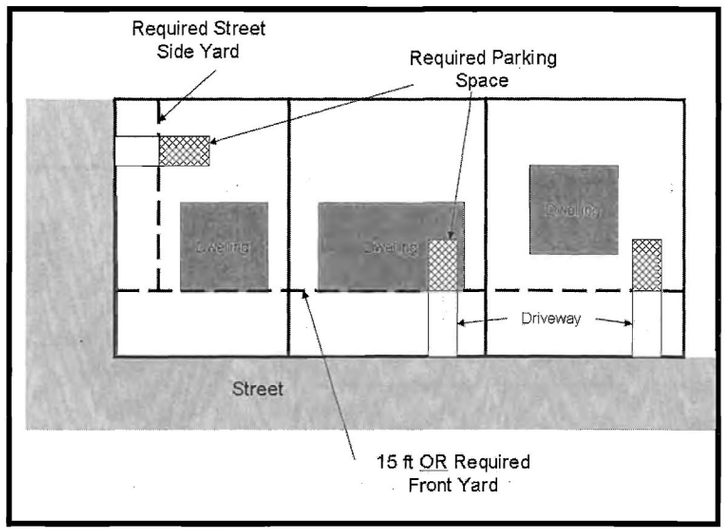
A. Dimensions

Off-street parking space dimensions for required parking spaces are 9 ft wide x 18 ft deep.

B. Location

1. Off-street vehicle parking for single-family attached dwellings, single-family detached dwellings, and residential homes shall be located on the same lot as the associated dwelling, unless shared parking is approved per Subsection 19.605.4.
2. No portion of the required parking space for single-family attached dwellings, single-family detached dwellings, or residential homes is allowed within the following areas. See Figure 19.607.1.B.2.
   a. Within the required front yard or within 15 ft of the front lot line, whichever is greater.
   b. Within a required street side yard.

**Figure 19.607.1.B.2**
**Required Parking Space Location**




C. Parking Surface Materials

Parking of vehicles on a property with a single-family attached dwelling, single-family detached dwelling, or residential home shall only be allowed on surfaces described in Subsection 19.607.1.C.

1. The following areas are required to have a durable and dust-free hard surface, and shall be maintained for all-weather use. The use of pervious concrete, pervious paving, driveway strips, or an in-ground grid or lattice surface is encouraged to reduce stormwater runoff.

   a. Required parking space(s).

   b. All vehicle parking spaces and maneuvering areas located with in a required front or side yard. Areas for boat or RV parking are exempt from this requirement and may be graveled.

   d. All off-street parking and maneuvering areas for a residential home.

2. Maneuvering areas and unrequired parking areas that are outside of a required front or side yard are allowed to have a gravel surface.

D. Parking Area Limitations

Uncovered parking spaces and maneuvering areas for vehicles, and for recreational vehicles and pleasure craft as described in Subsection 19.607.2.B, have the following area limitations. See Figure 19.607.1.D. The pole portion of a flag lot is not included in these area limitations.

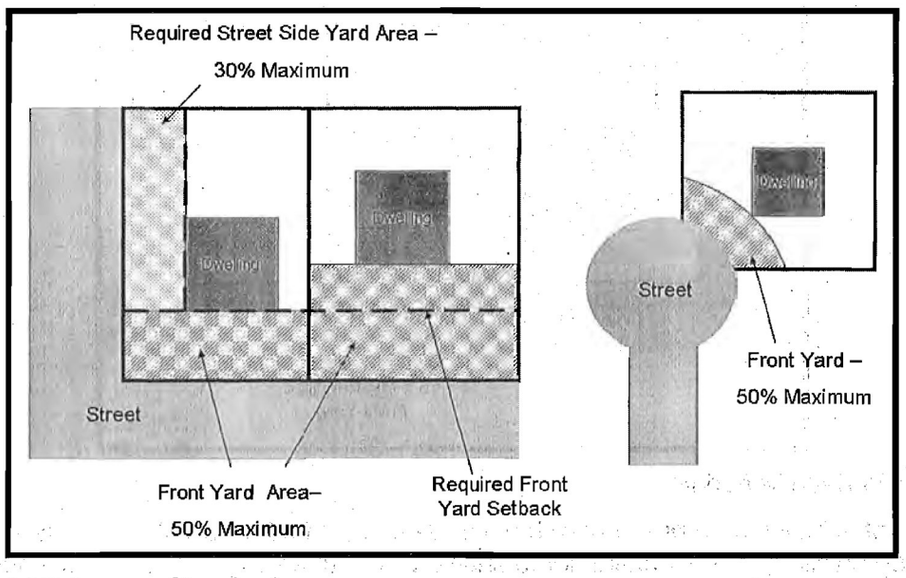
   a. Uncovered parking spaces and maneuvering areas cannot exceed 50% of the front yard area.

   b. Uncovered parking spaces and maneuvering areas cannot exceed 30% of the required street side yard area.

   c. No more than 3 residential parking spaces are allowed within the required front yard. A residential parking space in the required front yard is any 9- x 18-ft

rectangle that is entirely within the required front yard that does not overlap with another 9- x 18-ft rectangle within the required front yard.

**Figure 19.607.1.D**
**Front and Street Side Yard Parking Area Limits**




E. Additional Driveway Standards

1. Parking areas and driveways on the property shall align with the approved driveway approach and shall not be wider than the approved driveway approach within 10 ft of the right-of-way boundary.

2. Properties that take access from streets other than local streets and neighborhood routes shall provide a turnaround area on site that allows vehicles to enter the right-of-way in a forward motion.

### 19.607.2 Commercial Vehicle, Pleasure Craft, and Recreational Vehicle Parking

Subsection 19.607.2 is intended to preserve residential neighborhood character by minimizing the impacts created by the parking and storing of commercial vehicles, pleasure crafts, and recreational vehicles. The standards of Subsection 19.607.2 apply to off-street parking areas for single-family attached dwellings, single-family detached dwellings, and residential homes in all zones.

A. Commercial vehicles shall not be permitted to be parked or stored in the front yard or required street side yard on single-family attached dwelling, single-family detached dwelling, or residential home properties. Commercial vehicles may be present anywhere on these properties for up to 12 hours in 1 day if the vehicle is engaged in loading or unloading materials for a residence(s).

B. Recreational vehicles and pleasure crafts on single-family attached, single-family detached, or residential home properties must comply with the following regulations:

1. On residential lots less than 1 acre, only 1 recreational vehicle or private pleasure craft that is not located in an enclosed structure such as a garage shall be allowed. Canoes and other crafts less than 12 ft in length shall be exempt from this requirement. On lots larger than 1 acre, 1 additional recreational vehicle or private pleasure craft that is not located in an enclosed structure is allowed for each 1/2 acre of area over 1 acre.

2. No vehicle or pleasure craft shall be lived in, have housekeeping maintained, or have hook-up to utilities while parked or stored on, or otherwise attached or moored to, a lot used for a single-family attached dwelling, single-family detached dwelling, or residential home.
3. A recreational vehicle or pleasure craft may be parked anywhere on a residential lot for up to 24 hours for the purposes of loading or unloading the vehicle.

4. A recreational vehicle or pleasure craft is encouraged to be parked or stored in the side or rear yard area of a residential lot.
5. Recreational vehicles and pleasure craft must be stored on a surface that meets the requirements of Subsections 19.607.1.C.1 or 2. Parking areas for recreational vehicle and pleasure craft are considered excess parking, and may be graveled as allowed by Subsection 19.607.1.C.2. The prohibitions in Subsection 19.607.1.C.2 on graveled areas in front yard or side yard setbacks are not applicable for areas where recreational vehicles and pleasure crafts are parked.

## 19.608 LOADING

### 19.608.1 General Provisions

A. The purpose of off-street loading areas is to contain loading activity of goods on-site and avoid conflicts with travel in the public right-of-way; provide for safe and efficient traffic circulation on the site; and minimize the impacts of loading areas to surrounding properties.

B. Off-street loading areas may be required for commercial, industrial, public, and semipublic uses for the receipt or distribution of merchandise, goods, or materials by vehicles. Off-street loading is not required in the Downtown Storefront and Downtown Office Zones.

### 19.608.2. Number of Loading Spaces

The Planning Director shall determine whether to require off-street loading for commercial, industrial, public, and semipublic uses. The ratios listed below should be the minimum required unless the Planning Director finds that a different number of loading spaces are needed upon reviewing the loading needs of a proposed use.

A. Residential Buildings

Buildings where all of the floor area is in residential use should meet the following standards:

1. Fewer than 50 dwelling units on a site that abuts a local street: no loading spaces required.
2. All other buildings: 1 loading space.

B. Nonresidential and Mixed Use Buildings

Buildings where any floor area is in nonresidential uses should meet the following standards:

1. Less than 20,000 sq ft of total floor area: no loading spaces required.
2. 20,000 to 50,000 sq ft of total floor area: 1 loading space.
3. More than 50,000 sq ft of total floor area: 2 loading spaces.

### 19.608.3 Loading Space Standards

A. Loading spaces shall be at least 35 ft long and 10 ft wide, and shall have a height clearance of at least 13 ft.

B. Loading areas shall be provided on the site and be separate from parking spaces.

C. Off-street loading areas shall have a durable and dust-free hard surface. Permeable paving surfaces may be used to reduce surface water runoff and protect water quality.

D. Lighting of loading areas shall conform to the standards of Subsection 19.606.3.F.

E. Off-street loading areas for materials and merchandise shall be located outside of the minimum front and side yard requirements for structures.

F. Off-street loading areas shall be located where not a hindrance to drive aisles, walkways, public or private streets, or adjacent properties.

### 19.608.4 Prohibitions

A. Loading activity for a site, regardless of whether loading spaces are required, shall not obstruct travel within the right-of-way.

B. The accumulation of goods in loading areas shall be prohibited when it renders the space useless for loading and unloading of goods and passengers.

## 19.609 BICYCLE PARKING

### 19.609.1 Applicability

Bicycle parking shall be provided for all new commercial, industrial, community service use, and multifamily residential development. Temporary and seasonal uses (e.g., fireworks and Christmas tree stands) and storage units are exempt from Section 19.609. Bicycle parking shall be provided in the downtown zones and at transit centers.

### 19.609.2 Quantity of Spaces

A. The number of bicycle parking spaces shall be at least 10% of the minimum required vehicle parking for the use. In no case shall less than 2 spaces be provided. The number of bicycle parking spaces at transit centers shall be provided at the ratio of at least 1 space per 100 daily boardings.

B. Covered or enclosed bicycle parking. A minimum of 50% of the bicycle spaces shall be covered and/or enclosed (lockers) in either of the following situations:

1. When 10% or more of vehicle parking is covered.
2. If more than 10 bicycle parking spaces are required.

### 19.609.3 Space Standards and Racks

A. The dimension of each bicycle parking space shall be a minimum of 2 x 6 ft. A 5-ft-wide access aisle must be provided. If spaces are covered, 7 ft of overhead clearance must be provided. Bicycle racks must be securely anchored and designed to allow the frame and 1 wheel to be locked to a rack using a high security, U-shaped, shackle lock.

B. Lighting shall conform to the standards of Subsection 19.606.3.F.

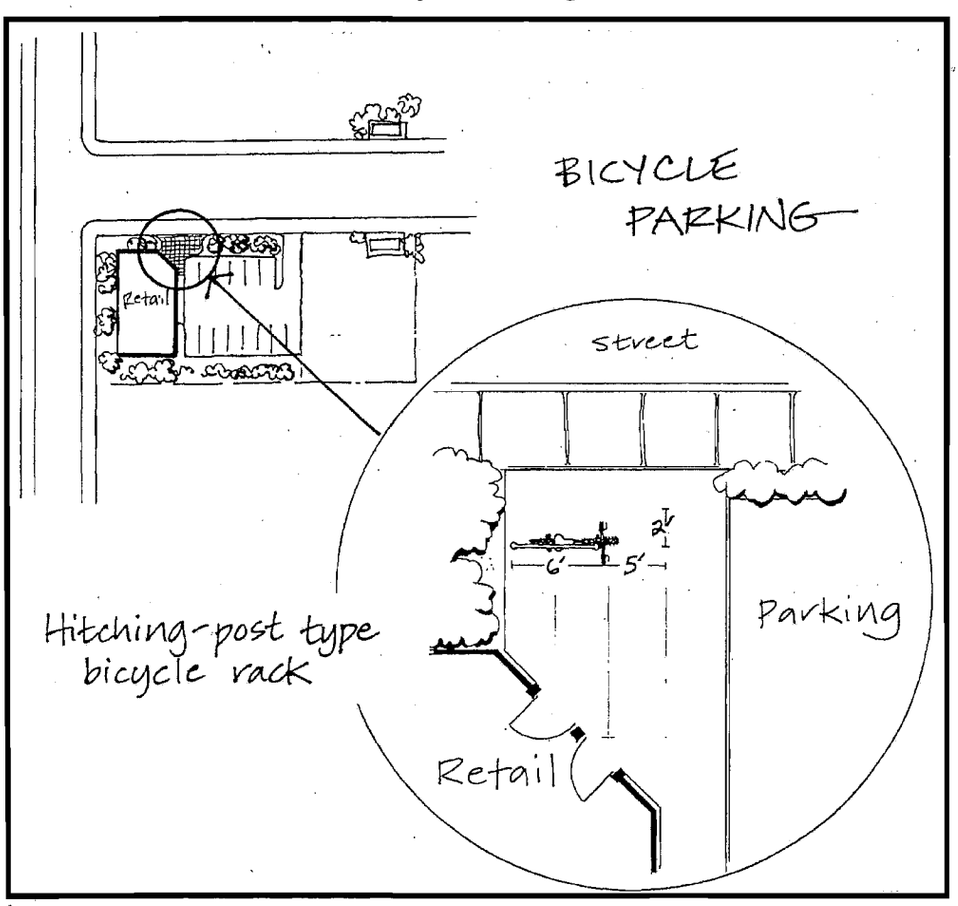
### 19.609.4 Location

A. Bicycle parking facilities shall meet the following requirements:

1. Located within 50 ft of the main building entrance.
2. Closer to the entrance than the nearest non-ADA designated vehicle parking space.
3. Designed to provide direct access to a public right-of-way.
4. Dispersed for multiple entrances.
5. In a location that is visible to building occupants or from the main parking lot.
6. Designed not to impede pedestrians along sidewalks or public rights-of-way.
7. Separated from vehicle parking areas by curbing or other similar physical barriers.

B. The public right-of-way may be utilized for bicycle parking when parking cannot be reasonably accommodated on the site and the location is convenient to the building's front entrance. The bicycle parking area in the right-of-way must leave a clear, unobstructed width of sidewalk that meets the Engineering Department's Public Works Standards for sidewalk passage. See Figure 19.609 for illustration of space and locational standards. A right-of-way permit is required.

**Figure 19.609**
**Bicycle Parking**



## 19.610 CARPOOL AND VANPOOL PARKING

### 19.610.1 Applicability

New industrial, institutional, and commercial development with 20 or more required parking spaces shall provide carpool/vanpool parking.

### 19.610.2 Number of Spaces

The number of carpool/vanpool parking spaces shall be at least 10% of the minimum amount of required parking spaces. The minimum amount of required parking spaces shall take into account the reduction allowed by Subsection 19.605.3.B.4.

### 19.610.3 Location

Parking for carpools/vanpools shall be located closer to the main entrances of the building than other employee or student parking, except ADA spaces.

### 19.610.4 Standards

Carpool/vanpool spaces shall be clearly designated with signs or pavement markings for use only by carpools/vanpools.

## 19.611 PARKING STRUCTURES

The purpose of Section 19.611 is to regulate the design and location of structured parking, and to provide appropriate incentives for the provision of structured parking. Structured parking is allowed to accommodate parking that is required for a specific use, or as a parking facility that is a use by itself.

### 19.611.1 Permitted Zones and Review Procedures

A. Parking structures, including underground parking, are allowed in all zoning districts except the R-10, R-7, R-5, and Downtown Open Space Zones. A parking structure can be permitted through approval of a Community Service Use application in all zones except the Downtown Open Space Zone.

B. Applications for parking structures with fewer than 20 spaces are subject to Type II review, per the procedures of Section 19.1005. Applications for parking structures with 20 spaces or more shall be reviewed by the Planning Commission at a public hearing per Section 19.1006 Type III Review. The Planning Commission may impose conditions on the proposed structure to make it compatible with surrounding properties.

### 19.611.2 Compliance with Other Sections of Chapter 19.600

A. Spaces in parking structures can be used to satisfy the minimum quantity requirements of Section 19.605. Spaces in parking structures are exempt from counting against maximum parking allowances if the spaces are utilized for types of parking listed in Subsection 19.605.3.A.

B. The space and drive aisle dimensions required in Subsection 19.606.1 shall apply to structured parking unless the applicant requests that the dimensions be reduced. Dimensions may be reduced if the applicant can demonstrate that the reduced dimensions can safely accommodate parking and maneuvering for standard passenger vehicles.

C. In addition to the standards in Subsection 19.611.3, parking structures shall comply with the development standards, design standards, and design guidelines for the base zone(s) in which the structure will be located.

### 19.611.3 Standards and Design Criteria for Structured Parking

A. A minimum of 75% of the length of any façade of a parking structure that faces a street shall provide ground-floor windows or wall openings. Blank walls are prohibited.

B. The structure shall be compatible with related structures on the lot in terms of appearance, size, scale, and bulk.

C. The required yard setbacks between the property line and the structure shall be landscaped per the requirements of Subsection 19.606.2.D.3.

D. The structure shall provide safe pedestrian connections between parking structure and the public sidewalk or principal building.

E. The structure shall provide adequate lighting to ensure motorist and pedestrian safety within the structured parking facility and connecting pedestrian ways to the principal building.

### 19.611.4 Incentives for Provision of Structured Parking.

A. An applicant shall be allowed an additional 0.5 sq ft of floor area above the maximum allowed floor area ratio for every 1 sq ft of structured parking provided. The applicant shall meet the other requirements of the development standards for the base zone in which it is located.

B. If structured parking is underground, the applicant shall be relieved from Subsection 19.611.3.C and can locate the underground structure within any part of the setback and yard area.

# CHAPTER 19.700

# PUBLIC FACILITY IMPROVEMENTS

SECTIONS:

**19.701 Purpose**
**19.702 Applicability**
**19.703 Review Process**
**19.704 Transportation Impact Evaluation**
**19.705 Rough Proportionality**
**19.706 Fee in Lieu of Construction**
**19.707 Agency Notification and Coordinated Review**
**19.708 Transportation Facility Requirements**
**19.709 Public Utility Requirements**

This chapter contains standards and procedures for both public transportation facilities and public utilities. Transportation facilities include elements of the public right-of-way such as streets, sidewalks, bicycle lanes, street trees, and benches. Public utilities include water, sewer, and storm infrastructure. Collectively, transportation facilities and public utilities are referred to as "public facilities." Public facilities that are built as a requirement of this chapter shall be designed and constructed in accordance with the Public Works Standards.

The main focus of this chapter is to ensure the provision of safe, convenient, and adequate public transportation facilities consistent with the adopted City of Milwaukie Transportation System Plan (TSP). The TSP outlines the community's vision for transportation facilities, which, among other things, includes a desire for complete streets with a multimodal emphasis. This chapter implements that vision by addressing the need for transportation facility improvements in a way that is consistent and equitable.

Provisions of this chapter coordinate with Title 12 Streets, Sidewalks, and Public Places, Chapter 13.28 Capital Improvements, Chapter 13.30 Reimbursement Districts, and Chapter 15.36 Public Works Standards. Any conflict between this chapter and another shall be resolved by administrative determination of the Engineering Director and Planning Director, as appropriate. Where the conditions imposed by any provision of this title are less restrictive than comparable conditions imposed by another provision of this title or any other ordinance, resolution, or regulation, the provision which is most restrictive shall govern. Unless specifically defined in Section 19.201, words or phrases used in this chapter are intended to be interpreted with the meaning they have in common usage to give this chapter its most reasonable application.

## 19.701 PURPOSE

The purpose of Chapter 19.700 is to ensure that development, including redevelopment, provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts. The purposes of this chapter include the following:

### 19.701.1 For Transportation Facilities

A. Provide standards and procedures to implement provisions of the State Transportation Planning Rule (OAR 660, Division 12) and local, regional, and state transportation system plans.

B. Protect the functional classification, capacity, and level of service of transportation facilities.

C. Ensure that transportation facility improvements are provided in rough proportion to development impacts.

D. Provide an equitable and consistent method of requiring transportation facility improvements.

E. Ensure that transportation facility improvements accommodate multiple modes of travel, including pedestrian, bicycle, transit, and auto.

**19.701.2 For Public Facilities**

A. Ensure that public facility improvements are safe, convenient, and adequate.

B. Ensure that public facility improvements are designed and constructed to City standards in a timely manner.

C. Ensure that the expenditure of public monies for public facility improvements is minimized when improvements are needed for private development.

D. Ensure that public facility improvements meet the City of Milwaukie Comprehensive Plan goals and policies.

## 19.702 APPLICABILITY

### 19.702.1 General

Chapter 19.700 applies to the following types of development in all zones:

A. Partitions.

B. Subdivisions.

C. Replats that increase the number of lots.

D. New construction.

E. Modification or expansion of an existing structure (including single-family residential expansions as described in Subsection 19.702.2) or a change or intensification in use that results in any one of the following:

1. A new dwelling unit.
2. Any increase in gross floor area.
3. Any projected increase in vehicle trips, as determined by the Engineering Director.

### 19.702.2 Single-Family Residential Expansions

Chapter 19.700 applies to single-family residential expansions as described below. The City has determined that the following requirements are roughly proportional to the impacts resulting from single-family residential expansions.

A. For expansions or conversions that increase the combined gross floor area of all structures (excluding nonhabitable accessory structures and garages) by 1,500 sq ft or more, all of Chapter 19.700 applies.

B. For expansions or conversions that increase the combined gross floor area of all structures (excluding nonhabitable accessory structures and garages) by at least 200 sq ft, but not more than 1,499 sq ft, right-of-way dedication may be required pursuant to the street design standards and guidelines contained in Subsection 19.708.2.

C. For expansions or conversions that increase the combined gross floor area of all structures (excluding nonhabitable accessory structures and garages) by less than 200 sq ft, none of Chapter 19.700 applies.

D. Single-family residential expansions shall provide adequate public utilities as determined by the Engineering Director pursuant to Section 19.709.

E. Construction or expansion of garage and carport structures shall comply with the requirements of Chapter 12.16 Access Management. Existing nonconforming accesses may not go further out of conformance and shall be brought closer into conformance to the greatest extent possible.

### 19.702.3 Exemptions

Chapter 19.700 does not apply to the following types of development in all zones:

A. Modifications to existing single-family residential structures that do not result in an increase in gross floor area.

B. Construction or expansion of nonhabitable residential detached accessory structures. Garage and carport construction or expansions are only partially exempt. See Subsection 19.702.2.E above.

C. Replats that do not increase the number of lots.

D. Property line adjustments.

E. Redevelopment of a structure following partial or total accidental destruction when all of the following criteria are met:

1. The redeveloped structure has a gross floor area no larger than the structure that was destroyed.
2. The use of the structure remains the same as the use that existed before the structure was destroyed.
3. A building permit is submitted and approved by the City within 2 years of the date of accidental destruction.

If redevelopment of a structure following accidental destruction does not meet all three of these criteria, the redeveloped structure shall be subject to Subsections 19.702.1 and 2 as applicable. Redevelopment of a structure following nonaccidental destruction shall constitute new construction and is not exempt from Chapter 19.700.

F. Operation, maintenance, and repair of existing public facilities.

G. Public capital improvement projects.

## 19.703 REVIEW PROCESS

### 19.703.1 Preapplication Conference

For all proposed development that requires a land use application and is subject to Chapter 19.700 per Section 19.702, the applicant shall schedule a preapplication conference with the City prior to submittal of the land use application. The Engineering Director may waive this requirement for proposals that are not complex.

### 19.703.2 Application Submittal

For all proposed development that is subject to Chapter 19.700 per Section 19.702, one of the following types of applications is required.

A. Development Permit Application

If the proposed development does not require a land use application, compliance with Chapter 19.700 will be reviewed as part of the development permit application submittal.

B. Transportation Facilities Review (TFR) Land Use Application

If the proposed development triggers a transportation impact study (TIS) per Section 19.704, a TFR land use application shall be required. Compliance with Chapter 19.700 will be reviewed as part of the TFR application submittal and will be subject to a Type II review process as set forth in Section 19.1005. The TFR application shall be consolidated with, and processed concurrently with, any other required land use applications.

If the proposed development does not trigger a TIS per Section 19.704, but does require the submittal of other land use applications, compliance with Chapter 19.700 will be reviewed during the review of the other land use applications.

### 19.703.3 Approval Criteria

For all proposed development that is subject to Chapter 19.700 per Section 19.702, the required development permit and/or land use application shall demonstrate compliance with the following approval criteria at the time of submittal.

A. Procedures, Requirements, and Standards

Development and related public facility improvements shall comply with procedures, requirements, and standards of Chapter 19.700 and the Public Works Standards.

B. Transportation Facility Improvements

Development shall provide transportation improvements and mitigation at the time of development in rough proportion to the potential impacts of the development per Section 19.705 Rough Proportionality, except as allowed by Section 19.706 Fee in Lieu of Construction.

C. Safety and Functionality Standards

The City will not issue any development permits unless the proposed development complies with the City's basic safety and functionality standards, the purpose of which is to ensure that development does not occur in areas where the surrounding public facilities are inadequate. Upon submittal of a development permit application, an applicant shall demonstrate that the development property has or will have all of the following:

1. Adequate street drainage, as determined by the Engineering Director.
2. Safe access and clear vision at intersections, as determined by the Engineering Director.
3. Adequate public utilities, as determined by the Engineering Director.
4. Access onto a public street with the minimum paved widths as stated in Subsection 19.703.3.C.5 below.
5. Adequate frontage improvements as follows:
    a. For local streets, a minimum paved width of 16 ft along the site's frontage.
    b. For nonlocal streets, a minimum paved width of 20 ft along the site's frontage.
    c. For all streets, a minimum horizontal right-of-way clearance of 20 ft along the site's frontage.

6. Compliance with Level of Service D for all intersections impacted by the development, except those on Oregon Highway 99E that shall be subject to the following:
   a. Level of Service F for the first hour of the morning or evening 2-hour peak period.
   b. Level of Service E for the second hour of the morning or evening 2-hour peak period.

**19.703.4 Determinations**

There are four key determinations related to transportation facility improvements that occur during the processing of a development permit or land use application. These determinations are described below in the order in which they occur in the review process. They are also shown in Figure 19.703.4. In making these determinations, the Engineering Director will take the goals and policies of the TSP into consideration and use the criteria and guidelines in this chapter.

A. Impact Evaluation

For development that is subject to Chapter 19.700 per Subsection 19.702.1, the Engineering Director will determine whether the proposed development has impacts to the transportation system pursuant to Section 19.704. Pursuant to Subsection 19.704.1, the Engineering Director will also determine whether a transportation impact study (TIS) is required. If a TIS is required, a transportation facilities review land use application shall be submitted pursuant to Subsection 19.703.2.B.

For development that is subject to Chapter 19.700 per Subsection 19.702.2, the City has determined that there are impacts to the transportation system if the proposed single-family residential expansion/conversion is greater than 200 sq ft.

B. Street Design

Given the City's existing development pattern, it is expected that most transportation facility improvements will involve existing streets and/or will serve infill development. To ensure that required improvements are safe and relate to existing street and development conditions, the Engineering Director will determine the most appropriate street design cross section using the standards and guidelines contained in Section 19.708.

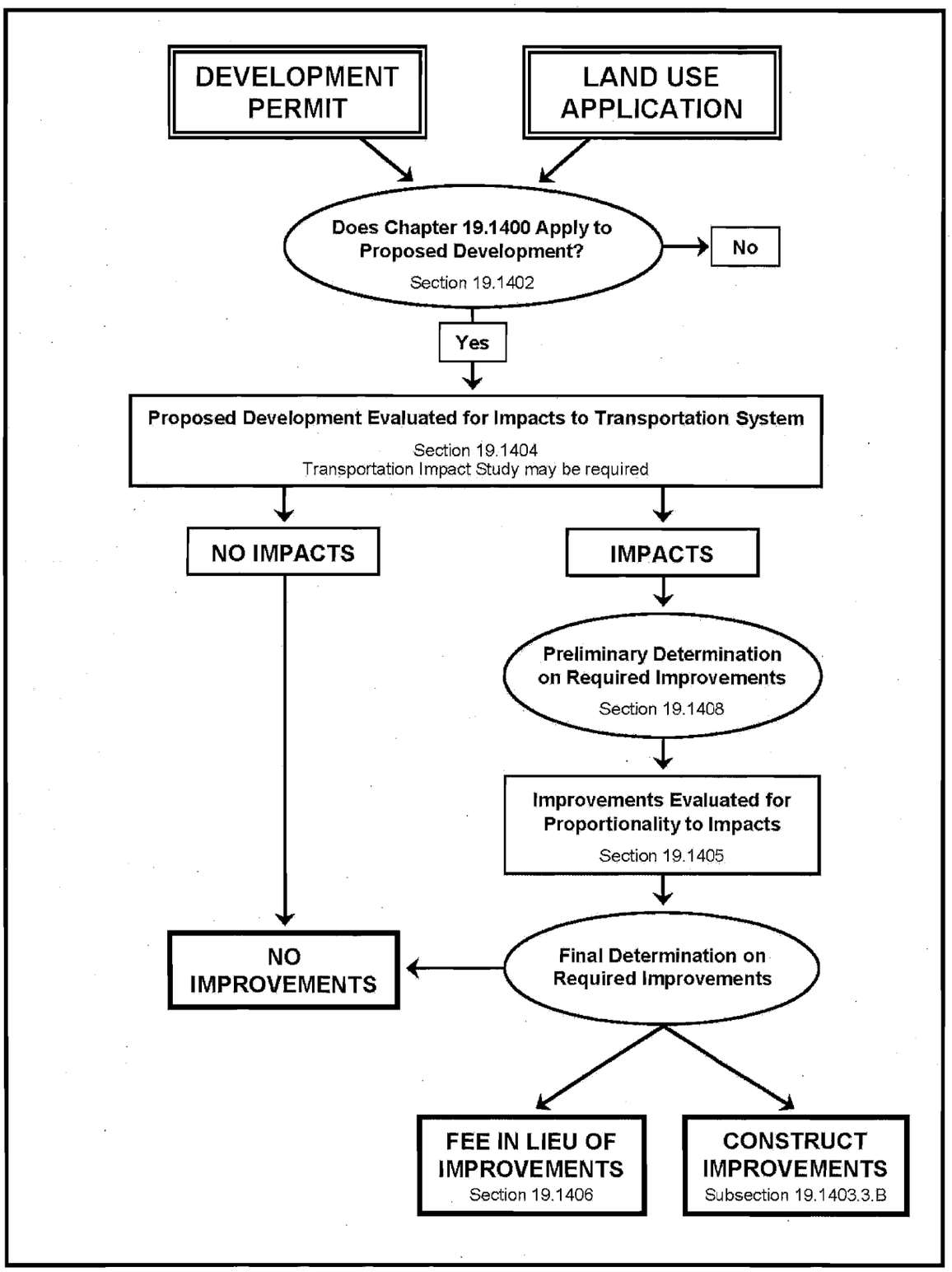
C. Proportional Improvements

When transportation facility improvements are required pursuant to this chapter, the Engineering Director will conduct a proportionality analysis pursuant to Section 19.705 to determine the level of improvements that are roughly proportional to the level of potential impacts from the proposed development. Guidelines for conducting a proportionality analysis are contained in Subsection 19.705.2.

D. Fee in Lieu of Construction (FILOC)

If transportation facility improvements are required and determined to be proportional, the City will require construction of the improvements at the time of development. However, the applicant may request to pay a fee in lieu of constructing the required transportation facility improvements. The Engineering Director will approve or deny such requests using the criteria for making FILOC determinations found in Subsection 19.706.1.

**Figure 19.703.4**
**Process for Determining Transportation Facility Improvements**



### 19.703.5 Remedies

A. Variances

Relief from any transportation facility improvement requirement in Section 19.708 may be granted through a variance process, which requires submittal and approval of a Variance land use application. Variance criteria and procedures are located in Section 19.911.

B. Appeals

Appeal of a land use decision is subject to the provisions of Chapter 19.1009. Appeal of a rough proportionality determination (Subsection 19.702.2 and Section 19.705) or street design standard determination (Subsection 19.708.2) not associated with a land use decision is subject to the provisions of Section 19.1006 Type III Review.

## 19.704 TRANSPORTATION IMPACT EVALUATION

The Engineering Director will determine whether a proposed development has impacts on the transportation system by using existing transportation data. If the Engineering Director cannot properly evaluate a proposed development's impacts without a more detailed study, a transportation impact study (TIS) will be required to evaluate the adequacy of the transportation system to serve the proposed development and determine proportionate mitigation of impacts. The TIS determination process and requirements are detailed below.

### 19.704.1 TIS Determination

A. Based on information provided by the applicant about the proposed development, the Engineering Director will determine when a TIS is required and will consider the following when making that determination.

1. Changes in land use designation, zoning designation, or development standard.
2. Changes in use or intensity of use.
3. Projected increase in trip generation.
4. Potential impacts to residential areas and local streets.
5. Potential impacts to priority pedestrian and bicycle routes, including, but not limited to, school routes and multimodal street improvements identified in the TSP.
6. Potential impacts to intersection level of service (LOS).

B. It is the responsibility of the applicant to provide enough detailed information for the Engineering Director to make a TIS determination.

C. A TIS determination is not a land use action and may not be appealed.

### 19.704.2 TIS General Provisions

A. All transportation impact studies, including neighborhood through-trip and access studies, shall be prepared and certified by a registered Traffic or Civil Engineer in the State of Oregon.

B. Prior to TIS scope preparation and review, the applicant shall pay to the City the fees and deposits associated with TIS scope preparation and review in accordance with the adopted fee schedule. The City's costs associated with TIS scope preparation and review will be charged against the respective deposits. Additional funds may be required if actual costs exceed deposit amounts. Any unused deposit funds will be refunded to the applicant upon final billing.

C. The TIS shall be submitted with a transportation facilities review (TFR) land use application pursuant to Subsection 19.703.2.B and associated application materials pursuant to Subsection 19.703.3. The City will not accept a TFR application for processing if it does not include the required TIS. The City will not accept other associated land use applications for processing if they are not accompanied by the required TFR application.

D. The Engineering Director may require a TIS review conference with the applicant to discuss the information provided in the TIS. This conference would be in addition to the required preapplication conference pursuant to Subsection 19.703.1. If such a conference is required, the City will not accept the TFR application for processing until the conference has taken place. The applicant shall pay the TIS review conference fee at the time of conference scheduling, in accordance with the adopted fee schedule.

E. The City may attach conditions of approval to land use decisions as needed to satisfy the transportation facility requirements of Section 19.708 and to mitigate transportation impacts identified in the TIS.

**19.704.3 TIS Requirements**

A. TIS Scope

The Engineering Director shall determine the study area, study intersections, trip rates, traffic distribution, and required content of the TIS based on information provided by the applicant about the proposed development.

1. The study area will generally comprise an area within a ½-mile radius of the development site. If the Engineering Director determines that development impacts may extend more than ½ mile from the development site, a larger study area may be required.
2. If notice to ODOT or Clackamas County is required pursuant to Section 19.707, the City will coordinate with these agencies to provide a comprehensive TIS scope.

B. TIS Content

A project-specific TIS checklist will be provided by the City once the Engineering Director has determined the TIS scope. A TIS shall include all of the following elements, unless waived by the Engineering Director.

1. Introduction and Summary

   This section should include existing and projected trip generation including vehicular trips and mitigation of approved development not built to date; existing level and proposed level of service standard for City and County streets and volume to capacity for State roads; project build year and average growth in traffic between traffic count year and build year; summary of transportation operations; proposed mitigation(s); and traffic queuing and delays at study area intersections.

2. Existing Conditions

   This section should include a study area description, including existing study intersection level of service.

3. Impacts

   This section should include the proposed site plan, evaluation of the proposed site plan, and a project-related trip analysis. A figure showing the assumed future year roadway network (number and type of lanes at each intersection) should also be provided.

4. Mitigation

   This section should include proposed site and areawide specific mitigation measures. Mitigation measures shall be roughly proportional to potential impacts pursuant to Section 19.705.

5. Appendix

   This section should include traffic counts, capacity calculations, warrant analysis, and any information necessary to convey a complete understanding of the technical adequacy of the TIS.

C. TIS Methodology

The City will include the required TIS methodology with the TIS scope.

D. Neighborhood Through-Trip Study

Any nonresidential development projected to add more than 25 through-vehicles per day to an adjacent residential local street or neighborhood route will require assessment and mitigation of residential street impacts. Through-trips are defined as those to and from a proposed development that have neither an origin nor a destination in the neighborhood. The through-trip study shall include all of the following:

1. Existing number of through-trips per day on adjacent residential local streets or neighborhood routes.
2. Projected number of through-trips per day on adjacent residential local streets or neighborhood routes that will be added by the proposed development.
3. Traffic management strategies to mitigate for the impacts of projected through-trips consistent with Section 19.705 Rough Proportionality and Subsection 19.704.4 Mitigation.

**19.704.4 Mitigation**

A. Transportation impacts shall be mitigated at the time of development when the TIS identifies an increase in demand for vehicular, pedestrian, bicycle, or transit transportation facilities within the study area.

B. The following measures may be used to meet mitigation requirements. Other mitigation measures may be suggested by the applicant or recommended by a State authority (e.g., ODOT) in circumstances where a State facility will be impacted by a proposed development. The Engineering Director or other decision-making body, as identified in Chapter 19.1000, shall determine if the proposed mitigation measures are adequate.

1. On- and off-site improvements beyond required frontage improvements.
2. Development of a transportation demand management program.
3. Payment of a fee in lieu of construction.
4. Correction of off-site transportation deficiencies within the study area that are not substantially related to development impacts.
5. Construction of on-site facilities or facilities located within the right-of-way adjoining the development site that exceed minimum required standards and that have a transportation benefit to the public.

## 19.705 ROUGH PROPORTIONALITY

The purpose of this section is to ensure that required transportation facility improvements are roughly proportional to the potential impacts of the proposed development. The rough proportionality requirements of this section apply to both frontage and off-site, or nonfrontage, improvements. A rough proportionality determination may be appealed pursuant to Subsection 19.703.5.

The Engineering Director will conduct a proportionality analysis for any proposed development that triggers transportation facility improvements per this chapter, with the exception of development subject to Subsection 19.702.2. The Engineering Director may conduct a proportionality analysis for development that triggers transportation facility improvements per Subsection 19.702.2.

When conducting a proportionality analysis for frontage improvements, the Engineering Director will not consider prior use for the portion of the proposed development that involves new construction. The Engineering Director will, however, consider any benefits that are estimated to accrue to the development property as a result of any required transportation facility improvements.

The following general provisions apply whenever a proportionality analysis is conducted.

### 19.705.1 Impact Mitigation

Mitigation of impacts, due to increased demand for transportation facilities associated with the proposed development, shall be provided in rough proportion to the transportation impacts of the proposed development. When a TIS is required, potential impacts will be determined in accordance with Section 19.704. When no TIS is required, potential impacts will be determined by the Engineering Director.

### 19.705.2 Rough Proportionality Guidelines

The following shall be considered when determining proportional improvements:

A. Condition and capacity of existing facilities within the impact area in relation to City standards. The impact area is generally defined as the area within a 1/2-mile radius of the proposed development. If a TIS is required pursuant to Section 19.704, the impact area is the TIS study area.

B. Existing vehicle, bicycle, pedestrian, and transit use within the impact area.

C. The effect of increased demand associated with the proposed development on transportation facilities and on other approved, but not yet constructed, development projects within the impact area.

D. The most recent use when a change in use is proposed that does not involve new construction.

E. Applicable TSP goals, policies, and plans.

F. Whether any route affected by increased transportation demand within the impact area is listed in any City program including, but not limited to, school trip safety, neighborhood traffic management, capital improvement, and system development improvement.

G. Accident history within the impact area.

H. Potential increased safety risks to transportation facility users, including pedestrians and cyclists.

I. Potential benefit the development property will receive as a result of the construction of any required transportation facility improvements.

J. Other considerations as may be identified in the review process.

### 19.706 FEE IN LIEU OF CONSTRUCTION

If transportation facility improvements are required and determined to be proportional, the City will require construction of the improvements at the time of development. However, the applicant may request to pay a fee in lieu of constructing the required transportation facility improvements. The fee in lieu of construction (FILOC) program ensures that opportunities to improve public transportation facilities are maximized and that the goals and requirements of this chapter are met. This section provides criteria for making FILOC determinations and administering the FILOC program.

#### 19.706.1 FILOC Criteria

The City may accept a fee in lieu of construction of required transportation facility improvements if one or more of the following conditions exist.

A. Required improvements are not feasible due to the inability to achieve proper design standards.

B. Required improvements would create a safety hazard.

C. Required improvements are part of a larger approved capital improvement project that is listed as a funded project in the City's Capital Improvement Program (CIP) and is scheduled for construction within 3 years of the City's approval of the proposed development.

#### 19.706.2 FILOC Findings

If the Engineering Director determines that a fee in lieu of construction satisfies one of the criteria in Subsection 19.706.1 above, the City will accept a fee upon the Engineering Director finding that deferring construction of transportation facility improvements will not result in any safety hazards. If the Engineering Director cannot make such a finding, then the City will not accept a fee and will require construction of the improvements.

#### 19.706.3 FILOC Fees

If determined by the Engineering Director that required transportation facility improvements are eligible for FILOC, the applicant shall pay to the City an amount equal to the estimated cost to construct the required improvements. The amount of the fee shall be determined by the Engineering Director and shall be based on the average cost of the most recent capital improvement project itemized bid prices. All fees shall be paid to the City prior to the issuance of any development permits.

A. If full transportation facility improvements have been assessed with previous development(s) on the development property and the proposed development has additional impacts, the City may only assess additional FILOC fees when there has been a change to the City's street design standards.

B. If partial transportation facility improvements have been assessed with previous development(s) on the development property and the proposed development has additional impacts, the City may assess additional FILOC fees for the balance of the improvements.

#### 19.706.4 FILOC Administration

Fees collected by the City may be used to construct public transportation facility improvements or to leverage additional grant money for larger transportation facility improvement projects. An

accounting of fees collected and expended will be made available by the City to the public on an annual basis at the end of the fiscal year. Expenditure of fees is subject to the following:

A. Fees shall be used for construction of public transportation facility improvement projects that benefit the development site and that are within the same Neighborhood District Association (NDA) boundary as the development site, with the following two exceptions.

   1. For development within a downtown zone, fees shall be used for construction of transportation facility improvements that benefit the development site and are within one or more of the downtown zones.

   2. For development within the Historic Milwaukie NDA and not within a downtown zone, fees shall be used for construction of transportation facility improvements that benefit the development site and that are within the Historic Milwaukie NDA and not within a downtown zone. Fees collected in the Historic Milwaukie NDA may be spent in one or more of the downtown zones with the approval of the Historic Milwaukie NDA.

B. Fees shall be used within 10 years of the date on which they were collected. Fees that have not been used within 10 years of collection will be returned to the owner of the development property at the time the refund is issued.

C. Staff shall identify the transportation facility improvement projects that meet the requirement of benefiting the development site per Subsection 19.706.4.A and that can be constructed within the 10-year time period per Subsection 19.706.4.B. Staff shall coordinate with the neighborhood district associations to prioritize the project lists for each neighborhood.

## 19.707 AGENCY NOTIFICATION AND COORDINATED REVIEW

### 19.707.1 Agency Notification

In addition to the general notice provisions set forth in Chapter 19.1000 for land use applications, the City shall provide notice of applications that are subject to Chapter 19.700 to the following agencies:

A. Oregon Department of Transportation (ODOT): If the proposed development generates more than 100 vehicle trips per day, is within 200 ft of a State highway, or is within 1,320 ft of a State highway interchange ramp.

B. ODOT Rail Division: If the proposed development is within 300 ft of a public railroad crossing or if a modification is proposed to an existing public railroad crossing. Private crossing improvements are subject to review and licensing by the private rail service provider.

C. Metro and Clackamas County: If the proposed development is within 200 ft of a designated arterial or collector roadway, as identified in Figure 8-3b of the TSP.

D. Metro: If the proposed development is within 200 ft of a designated regional multiuse trail, as identified in the Regional Transportation Plan.

E. TriMet: If the proposed development (excluding single-family development on an existing lot) is within 200 ft of an existing or proposed transit route as identified on the current TriMet service map and Figure 7-3 of the TSP.

### 19.707.2 Coordinated Review

The City shall coordinate application review and land use findings and conditions, if any, with the agencies listed above. The City shall include the deadline for review comments in its notice.

Agencies shall indicate in their comments if additional public facility permits or approvals are required through their agency separate from City permits and approvals.

## 19.708 TRANSPORTATION FACILITY REQUIREMENTS

This section contains the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities. For ease of reading, the more common term "street" is used more frequently than the more technical terms "public right-of-way" or "right-of-way." As used in this section, however, all three terms have the same meaning.

The City recognizes the importance of balancing the need for improved transportation facilities with the need to ensure that required improvements are fair and proportional. The City also acknowledges the value in providing street design standards that are both objective and flexible. Objective standards allow for consistency of design and provide some measure of certainty for developers and property owners. Flexibility, on the other hand, gives the City the ability to design streets that are safe and that respond to existing street and development conditions in a way that preserves neighborhood character.

The City's street design standards are based on the street classification system described in the TSP. Figure 8-3a of the TSP identifies the functional street classification for every street in the City and Figure 10-1 identifies the type and size of street elements that may be appropriate for any given street based on its classification.

### 19.708.1 General Street Requirements and Standards

A. Access Management

All development subject to Chapter 19.700 shall comply with access management standards contained in Chapter 12.16.

B. Clear Vision

All development subject to Chapter 19.700 shall comply with clear vision standards contained in Chapter 12.24.

C. Development in Downtown Zones

Street design standards and right-of-way dedication for the downtown zones are subject to the requirements of the Milwaukie Downtown and Riverfront Plan: Public Area Requirements. Unless specifically stated otherwise, the standards in Section 19.708 do not apply to development located in the downtown zones or on street sections shown in the public area requirements plan per Subsection 19.310.5.

D. Development in Non-Downtown Zones

Development in a non-downtown zone that has frontage on a street section shown in the Milwaukie Downtown and Riverfront Plan: Public Area Requirements is subject to the street design standards and right-of-way dedication requirements contained in that document for that street frontage. The following general provisions apply only to street frontages that are not shown in the Milwaukie Downtown and Riverfront Plan: Public Area Requirements and for development that is not in any of the downtown zones listed in Subsection 19.708.1.C above:

1. Streets shall be designed and improved in accordance with the standards of this chapter and the Public Works Standards. ODOT facilities shall be designed consistent with State and federal standards. County facilities shall be designed consistent with County standards.

2. Streets shall be designed according to their functional classification per Figure 8-3b of the TSP.
3. Street right-of-way shall be dedicated to the public for street purposes in accordance with Subsection 19.708.2. Right-of-way shall be dedicated at the corners of street intersections to accommodate the required turning radii and transportation facilities in accordance with Section 19.708 and the Public Works Standards. Additional dedication may be required at intersections for improvements identified by the TSP or a required transportation impact study.
4. The City shall not approve any development permits for a proposed development unless it has frontage or approved access to a public street.
5. Off-site street improvements shall only be required to ensure adequate access to the proposed development and to mitigate for off-site impacts of the proposed development.
6. The following provisions apply to all new public streets and extensions to existing public streets.
   a. All new streets shall be dedicated and improved in accordance with this chapter.
   b. Dedication and construction of a half-street is generally not acceptable. However, a half-street may be approved where it is essential to allow reasonable development of a property and when the review authority finds that it will be possible for the property adjoining the half-street to dedicate and improve the remainder of the street when it develops. The minimum paved roadway width for a half-street shall be the minimum width necessary to accommodate 2 travel lanes pursuant to Subsection 19.708.2.
7. Traffic calming may be required for existing or new streets. Traffic calming devices shall be designed in accordance with the Public Works Standards or with the approval of the Engineering Director.
8. Railroad Crossings

   Where anticipated development impacts trigger a need to install or improve a railroad crossing, the cost for such improvements may be a condition of development approval.
9. Street Signs

   The City shall install all street signs, relative to traffic control and street names, as specified by the Engineering Director. The applicant shall reimburse the City for the cost of all such signs installed by the City.
10. Streetlights

    The location of streetlights shall be noted on approved development plans. Streetlights shall be installed in accordance with the Public Works Standards or with the approval of the Engineering Director.

E. Street Layout and Connectivity

1. The length, width, and shape of blocks shall take lot size standards, access and circulation needs, traffic safety, and topographic limitations into consideration.
2. The street network shall be generally rectilinear but may vary due to topography or other natural conditions.

3. Streets shall be extended to the boundary lines of the developing property where necessary to give access to or allow for future development of adjoining properties.
   a. Temporary turnarounds shall be constructed for street stubs in excess of 150 ft in length. Drainage facilities shall be constructed to properly manage stormwater runoff from temporary turnarounds.
   b. Street stubs to adjoining properties shall not be considered turnarounds, unless required and designed as turnarounds, since they are intended to continue as through streets when adjoining properties develop.
   c. Reserve strips may be required in order to ensure the eventual continuation or completion of a street.
4. Permanent turnarounds shall only be provided when no opportunity exists for creating a through street connection. The lack of present ownership or control over abutting property shall not be grounds for construction of a turnaround. For proposed land division sites that are 3 acres or larger, a street ending in a turnaround shall have a maximum length of 200 ft, as measured from the cross street right-of-way to the farthest point of right-of-way containing the turnaround. For proposed land division sites that are less than 3 acres, a street ending in a turnaround shall have a maximum length of 400 ft, measured from the cross street right-of-way to the farthest point of right-of-way containing the turnaround. Turnarounds shall be designed in accordance with the requirements of the Public Works Standards. The requirements of this subsection may be adjusted by the Engineering Director to avoid alignments that encourage nonlocal through traffic.
5. Closed-end street systems may serve no more than 20 dwellings.

F. Intersection Design and Spacing
1. Connecting street intersections shall be located to provide for traffic flow, safety, and turning movements, as conditions warrant.
2. Street and intersection alignments for local streets shall facilitate local circulation but avoid alignments that encourage nonlocal through traffic.
3. Streets should generally be aligned to intersect at right angles (90 degrees). Angles of less than 75 degrees will not be permitted unless the Engineering Director has approved a special intersection design.
4. New streets shall intersect at existing street intersections so that centerlines are not offset. Where existing streets adjacent to a proposed development do not align properly, conditions shall be imposed on the development to provide for proper alignment.
5. Minimum and maximum block perimeter standards are provided in Table 19.708.1.
6. Minimum and maximum intersection spacing standards are provided in Table 19.708.1.

| Table 19.708.1<br>Street/Intersection Spacing | | | |
|---|---|---|---|
| Street Classification | Minimum Distance Between Street Intersections | Maximum Distance Between Street Intersections | Maximum Block Perimeter |
| Arterial | 530' | 1,000' | 2600' |
| Collector | 300' | 600' | 1800' |
| Neighborhood Route | 150' | 530' | 1650' |
| Local | 100' | 530' | 1650' |

### 19.708.2 Street Design Standards

Table 19.708.2 contains the street design elements and dimensional standards for street cross sections by functional classification. Dimensions are shown as ranges to allow for flexibility in developing the most appropriate cross section for a given street or portion of street based on existing conditions and the surrounding development pattern. The additional street design standards in Subsection 19.708.2.A augment the dimensional standards contained in Table 19.708.2. The Engineering Director will rely on Table 19.708.2 and Subsection 19.708.2.A to determine the full-width cross section for a specific street segment based on functional classification. The full-width cross section is the sum total of the widest dimension of all individual street elements. If the Engineering Director determines that a full-width cross section is appropriate and feasible, a full-width cross section will be required. If the Engineering Director determines that a full-width cross section is not appropriate or feasible, the Engineering Director will modify the full-width cross section requirement using the guidelines provided in Subsection 19.708.2.B. Standards for design speed, horizontal/vertical curves, grades, and curb return radii are specified in the Public Works Standards.

| Table 19.708.2<br>Street Design Standards (Dimensions are Shown in Feet) | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | Individual Street Elements | | | | | |
| Street Classification | Full-Width Right of Way Dimension | Travel Lane (Center Lane) | Bike Lane | On-Street Parking | Landscape Strips | Sidewalk Curb Tight | Sidewalk Setback |
| Arterial | 54'–89' | 11'–12' (12'–13') | 5'–6' | 6'–8' | 3'–5' | 8'–10' | 6' |
| Collector | 40'–74' | 10'–11' | 5'–6' | 6'–8' | 3'–5' | 8' | 6' |
| Neighborhood | 20'–68' | 10' | 5' | 6'–8' | 3'–5' | 6' | 5' |
| Local | 20'–68' | 8' or 10' | 5' | 6'–8' | 3'–5' | 6' | 5' |
| Truck Route | 34'–89' | 11'–12' (12'–13') | 5'–6' | 6'–8' | 3'–5' | 8'–10' | Per street classification |
| Transit Route | 30'–89' | 10'–12' (12'–13') | 5'–6' | 6'–8' | 3'–5' | Per street classification | Per street classification |

A. Additional Street Design Standards

These standards augment the dimensional standards contained in Table 19.708.2 and may increase the width of an individual street element and/or the full-width right-of-way dimension.

1. Minimum 10-ft travel lane width shall be provided on local streets with no on-street parking.
2. Where travel lanes are next to a curb line, an additional 1 ft of travel lane width shall be provided. Where a travel lane is located between curbs, an additional 2 ft of travel lane width shall be provided.
3. Where shared lanes or bicycle boulevards are planned, up to an additional 6 ft of travel lane width shall be provided.
4. Bike lane widths may be reduced to a minimum of 4 ft where unusual circumstances exist, as determined by the Engineering Director, and where such a reduction would not result in a safety hazard.
5. Where a curb is required by the Engineering Director, it shall be designed in accordance with the Public Works Standards.
6. Center turn lanes are not required for truck and bus routes on street classifications other than arterial roads.
7. On-street parking in industrial zones shall have a minimum width of 8 ft.
8. On-street parking in commercial zones shall have a minimum width of 7 ft.
9. On-street parking in residential zones shall have a minimum width of 6 ft.
10. Sidewalk widths may be reduced to a minimum of 4 ft for short distances for the purpose of avoiding obstacles within the public right-of-way including, but not limited to, trees and power poles.
11. Landscape strip widths shall be measured from back of curb to front of sidewalk.
12. Where landscape strips are required, street trees shall be provided a minimum of every 40 ft in accordance with the Public Works Standards and the Milwaukie Street Tree List and Street Tree Planting Guidelines.
13. Where water quality treatment is provided within the public right-of-way, the landscape strip width may be increased to accommodate the required treatment area.
14. A minimum of 6 in shall be required between a property line and the street element that abuts it; e.g., sidewalk or landscape strip.

B. Street Design Determination Guidelines

The Engineering Director shall make the final determination regarding right-of-way and street element widths using the ranges provided in Table 19.708.2 and the additional street design standards in Subsection 19.708.2.A. The Engineering Director shall also determine whether any individual street element may be eliminated on one or both sides of the street in accordance with Figure 10-1 of the TSP. When making a street design determination that varies from the full-width cross section, the Engineering Director shall consider the following:

1. Options and/or needs for environmentally beneficial and/or green street designs.
2. Multimodal street improvements identified in the TSP.
3. Street design alternative preferences identified in Chapter 10 of the TSP, specifically regarding sidewalk and landscape strip improvements.
4. Existing development pattern and proximity of existing structures to the right-of-way.

5. Existing right-of-way dimensions and topography.

### 19.708.3 Sidewalk Requirements and Standards

A. General Provisions

1. Goals, objectives, and policies relating to walking are included in Chapter 5 of the TSP and provide the context for needed pedestrian improvements. Figure 5-1 of the TSP illustrates the Pedestrian Master Plan and Table 5-3 contains the Pedestrian Action Plan.

2. Americans with Disabilities Act (ADA) requirements for public sidewalks shall apply where there is a conflict with City standards.

B. Sidewalk Requirements

1. Requirements

   Sidewalks shall be provided on the public street frontage of all development per the requirements of this chapter. Sidewalks shall generally be constructed within the dedicated public right-of-way, but may be located outside of the right-of-way within a public easement with the approval of the Engineering Director.

2. Design Standards

   Sidewalks shall be designed and improved in accordance with the requirements of this chapter and the Public Works Standards.

3. Maintenance

   Abutting property owners shall be responsible for maintaining sidewalks and landscape strips in accordance with Chapter 12.04.

### 19.708.4 Bicycle Facility Requirements and Standards

A. General Provisions

1. Bicycle facilities include bicycle parking and on-street and off-street bike lanes, shared lanes, bike boulevards, and bike paths.

2. Goals, objectives, and policies relating to bicycling are included in Chapter 6 of the TSP and provide the context for needed bicycle improvements. Figure 6-2 of the TSP illustrates the Bicycle Master Plan, and Table 6-3 contains the Bicycle Action Plan.

B. Bicycle Facility Requirements

1. Requirements

   Bicycle facilities shall be provided in accordance with this chapter, Chapter 19.600, the TSP, and the Milwaukie Downtown and Riverfront Plan: Public Area Requirements. Requirements include, but are not limited to, parking, signage, pavement markings, intersection treatments, traffic calming, and traffic diversion.

2. Timing of Construction

   To assure continuity and safety, required bicycle facilities shall generally be constructed at the time of development. If not practical to sign, stripe, or construct bicycle facilities at the time of development due to the absence of adjacent facilities, the development shall provide the paved street width necessary to accommodate the required bicycle facilities.

3. Design Standards

   Bicycle facilities shall be designed and improved in accordance with the requirements of this chapter and the Public Works Standards. Bicycle parking shall be designed and improved in accordance with Chapter 19.600 and the Milwaukie Downtown and Riverfront Plan: Public Area Requirements.

**19.708.5 Pedestrian/Bicycle Path Requirements and Standards**

A. General Provisions

Pedestrian/bicycle paths are intended to provide safe and convenient connections within and from new residential subdivisions, multifamily developments, planned developments, shopping centers, and commercial districts to adjacent and nearby residential areas, transit stops, and neighborhood activity centers.

Pedestrian/bicycle paths may be in addition to, or in lieu of, a public street. Paths that are in addition to a public street shall generally run parallel to that street. These types of paths are not subject to the provisions of this subsection and shall be designed in accordance with the Public Works Standards or as specified by the Engineering Director. Paths that are in lieu of a public street shall be considered in areas only where no other public street connection options are feasible. These types of paths are subject to the provisions of this subsection.

B. Pedestrian/Bicycle Path Requirements

In addition to sidewalks on public streets, other available pedestrian routes, as used in this subsection, include walkways within shopping centers, planned developments, community service use developments, and commercial and industrial districts. Routes may cross parking lots on adjoining properties if the route is paved, unobstructed, and open to the public for pedestrian use.

Pedestrian/bicycle paths shall be required in the following situations.

1. In residential and mixed use districts, a pedestrian/bicycle path shall be required at least every 300 ft when a street connection is not feasible.
2. In residential and industrial districts where addition of a path would reduce walking distance, via a sidewalk or other available pedestrian route, by at least 400 ft and by at least 50% to an existing transit stop, planned transit route, school, shopping center, or park.
3. In commercial districts and community service use developments where addition of a path would reduce walking distance, via a sidewalk or other available pedestrian route, by at least 200 ft and by at least 50% to an existing transit stop, planned transit route, school, shopping center, or park.
4. In all districts where addition of a path would provide a midblock connection between blocks that exceed 800 ft or would link the end of a turnaround with a nearby street or activity center.

C. Design Standards

Pedestrian/bicycle paths shall be designed and improved in accordance with the requirements of this chapter and the Public Works Standards. Paths shall be located to provide a reasonably direct connection between likely pedestrian and bicyclist destinations. A path shall have a minimum right-of-way width of 15 ft and a minimum improved surface of 10 ft. If a path also provides secondary fire access or a public utility corridor, it shall have a

minimum right-of-way width of 20 ft and a minimum improved surface of 15 ft. Additional standards relating to entry points, maximum length, visibility, and path lighting are provided in the Public Works Standards.

D. Ownership and Maintenance

To ensure ongoing access to and maintenance of pedestrian/bicycle paths, the Engineering Director will require one or more of the following:

1. Dedication of the path to the public and acceptance of the path by the City as public right-of-way prior to final development approval.
2. Creation of a public access easement over the path prior to final development approval.
3. Incorporation of the path into recorded easements or tract(s) of common ownership that specifically requires existing property owners and future property owners who are subject to such easements or own such tracts to provide for the ownership, liability, and maintenance of the path into perpetuity. This shall occur prior to final development approval.

**19.708.6 Transit Requirements and Standards**

A. General Provisions

1. Transit facilities include bus stops, shelters, and related facilities. Required transit facility improvements may include the dedication of land or the provision of a public easement.
2. Goals, objectives, and policies relating to transit are included in Chapter 7 of the TSP. Figure 7-3 of the TSP illustrates the Transit Master Plan, and Table 7-2 contains the Transit Action Plan.

B. Transit Facility Requirements

1. Requirements

Factors that determine the level of transit facility requirements include, but are not limited to, street classification, existing and planned level of transit service on adjacent streets, block length, proximity of major pedestrian destinations, existing and projected ridership, and transit needs of the development. Required improvements may include provision of an easement or dedication of land for transit facilities, benches, shelters, bus turnouts, curb extensions, median refuges for pedestrian crossings, public telephones, or pedestrian lighting. The required improvements shall reflect a reasonable and proportionate share of the potential impacts of the proposed development pursuant to Section 19.705.

2. Location of Facilities

Transit facilities shall be located at controlled street intersections, wherever possible. Where a bus stop has already been established within 500 ft of a proposed development, a new bus stop shall only be provided if recommended by TriMet and required by the Engineering Director. Otherwise, the development shall upgrade the existing stop. Upgrades may include, but are not limited to, the installation of benches, shelters, and landscaping.

3. Design Standards

   Transit facilities shall be designed and improved in accordance with current TriMet standards, the requirements of this chapter, and the Public Works Standards.

4. TriMet Notice and Coordination

   The City shall provide notice of all proposed developments to TriMet pursuant to Section 19.707. TriMet may recommend the construction of transit-related facilities at the time of development to support transit use. The City shall make the final determination regarding transit-related facility requirements.

## 19.709 PUBLIC UTILITY REQUIREMENTS

### 19.709.1 Review Process

The Engineering Director shall review all proposed development subject to Chapter 19.700 per Section 19.702 in order to: (1) evaluate the adequacy of existing public utilities to serve the proposed development, and (2) determine whether new public utilities or an expansion of existing public utilities is warranted to ensure compliance with the City's public utility requirements and standards.

A. Permit Review

   The Engineering Director shall make every effort to review all development permit applications for compliance with the City's public utility requirements and standards within 10 working days of application submittal. Upon completion of this review, the Engineering Director shall either approve the application, request additional information, or impose conditions on the application to ensure compliance with this chapter.

B. Review Standards

   Review standards for public utilities shall be those standards currently in effect, or as modified, and identified in such public documents as Milwaukie's Comprehensive Plan, Wastewater Master Plan, Water Master Plan, Stormwater Master Plan, Transportation System Plan, and Public Works Standards.

### 19.709.2 Public Utility Improvements

Public utility improvements shall be required for proposed development that would have a detrimental effect on existing public utilities, cause capacity problems for existing public utilities, or fail to meet standards in the Public Works Standards. Development shall be required to complete or otherwise provide for the completion of the required improvements.

A. The Engineering Director shall determine which, if any, utility improvements are required. The Engineering Director's determination requiring utility improvements shall be based upon an analysis that shows the proposed development will result in one or more of the following situations:

   1. Exceeds the design capacity of the utility.
   2. Exceeds Public Works Standards or other generally accepted standards.
   3. Creates a potential safety hazard.
   4. Creates an ongoing maintenance problem.

B. The Engineering Director may approve one of the following to ensure completion of required utility improvements.

1. Formation of a reimbursement district in accordance with Chapter 13.30 for off-site public facility improvements fronting other properties.
2. Formation of a local improvement district in accordance with Chapter 3.08 for off-site public facility improvements fronting other properties.

### 19.709.3 Design Standards

Public utility improvements shall be designed and improved in accordance with the requirements of this chapter, the Public Works Standards, and improvement standards and specifications identified by the City during the development review process. The applicant shall provide engineered utility plans to the Engineering Director for review and approval prior to construction to demonstrate compliance with all City standards and requirements.

### 19.709.4 Oversizing

The Engineering Director may require utility oversizing in anticipation of additional system demand. If oversizing is required, the Engineering Director may authorize a reimbursement district or a system development charge (SDC) credit in accordance with Chapter 13.28.

### 19.709.5 Monitoring

The Engineering Director shall monitor the progress of all public utility improvements by the applicant to ensure project completion and compliance with all City permitting requirements and standards. Utility improvements are subject to the requirements of Chapter 12.08. Follow-up action, such as facility inspection, bond release, and enforcement, shall be considered a part of the monitoring process.

# CHAPTER 19.800

# NONCONFORMING USES AND DEVELOPMENT

**SECTIONS:**

**19.801 Purpose**
**19.802 General Provisions**
**19.803 Continuation of Nonconforming Uses and Development**
**19.804 Alteration of Nonconforming Uses and Development**
**19.805 Rebuilding of Nonconforming Uses and Development**
**19.806 Amortization of Nonconforming Uses**

## 19.801 PURPOSE

Nonconforming uses and development are uses and development that do not conform to the City's current land use and development regulations either because they were established prior to the enactment of such regulations or because they conformed at the time they were established but applicable City regulations have since changed.

Most nonconforming uses and development may be maintained, but may not be altered, without land use review. Nonconforming uses and development may be rebuilt if destroyed in some instances. In general, however, nonconforming uses and development shall be brought into conformance with applicable land use and development regulations when redevelopment occurs. In particular, the City does not support the continuation of high-impact nonconforming uses in perpetuity.

## 19.802 GENERAL PROVISIONS

### 19.802.1 Nonconforming Uses and Development

A specific site may be nonconforming because it contains a nonconforming use, nonconforming development, or both, as defined in Section 19.201. Determination of the legal status of a nonconforming use or development may be requested by the property owner pursuant to Section 19.903.

### 19.802.2 Provisions

The following provisions apply to all nonconforming uses and development:

A. Changes in ownership may occur and do not affect the status of a nonconforming use or development.

B. A nonconforming use or development is allowed to change to a conforming use or development. Once a conforming use or development occupies the site, the nonconforming status is lost and the nonconforming use or development may not be reestablished.

C. Routine maintenance and repair, as defined in Section 19.201, is allowed. Alteration, as defined in Section 19.201 and further described in Section 19.804, or destruction, as described in Section 19.805, may require land use review and/or may result in the loss of the nonconforming status of the use or development.

D. Where other sections of the Milwaukie Municipal Code require nonconforming uses or development to come closer to conformance, those provisions apply instead of the provisions of this chapter.

E. Provisions of this chapter do not apply to signs. Nonconforming signs are regulated by Title 14 Signs.

## 19.803 CONTINUATION OF NONCONFORMING USES AND DEVELOPMENT

### 19.803.1 Provisions

A nonconforming use or development may continue indefinitely pursuant to the provisions in Subsection 19.802.2 unless it is discontinued as described in this section, altered as described in Section 19.804, destroyed as described in Section 19.805, or amortized as described in Section 19.806.

### 19.803.2 Loss of Nonconforming Use Status

If a nonconforming use is discontinued or abandoned, as defined in Section 19.201, for more than 1 year, the site will lose its nonconforming status and any subsequent use on the site shall conform to all applicable land use and development regulations.

## 19.804 ALTERATION OF NONCONFORMING USES AND DEVELOPMENT

### 19.804.1 Nonconforming Uses

A. Provisions

The following provisions apply to the alteration of nonconforming uses:

1. A nonconforming use shall not be moved, in whole or in part, to any portion of the site other than that occupied by the nonconforming use, except as allowed per Subsection 19.804.1.B.1.
2. No additional development or physical alterations associated with the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1. Additional development or physical alterations not associated with the nonconforming use and that conform to Title 19 are allowed.
3. No intensification of the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1. Alterations that decrease the intensity of the nonconforming use are allowed.

B. Land Use Review Required

1. A nonconforming use shall not be moved, altered, or intensified unless such move, alteration, or intensification is approved by the Planning Commission through a Type III review per Section 19.1006. The applicant shall demonstrate that the proposed move, alteration, or intensification would result in no more of a detriment to surrounding properties than the existing nonconforming use.
2. If a nonconforming use involving a structure is replaced by another use, the new use shall conform to Title 19 unless the Planning Commission determines that such structure is suitable only for another nonconforming use through a Type III review per Section 19.1006. The applicant shall demonstrate that the new nonconforming use would be no more detrimental to surrounding properties than the one it is replacing.

### 19.804.2 Nonconforming Development

The following provisions apply to the alteration of nonconforming development:

A. Alterations or expansions that increase or extend the nonconformity are not allowed unless a variance is approved pursuant to Section 19.911.

B. Alterations or expansions that conform to Title 19 are allowed. For example, development that does not conform to height, yard requirements, or lot coverage may be altered provided that the alteration does not exceed the height, yard requirements, or lot coverage requirements of Title 19.

## 19.805 REBUILDING OF NONCONFORMING USES AND DEVELOPMENT

### 19.805.1 Provisions

The following provisions establish when a nonconforming use or development may be reestablished or rebuilt following its intentional or accidental destruction:

A. When a nonconforming use or development is intentionally destroyed to an extent less than or equal to 50% of its replacement value, restoration is allowed. The restoration shall not result in an increase in the nonconformance of the use or development.

B. When a nonconforming use or development is intentionally destroyed to an extent exceeding 50% of its replacement value, restoration of the use or development shall conform to all applicable land use and development regulations.

C. If a nonconforming use or development is partially or totally destroyed by fire or other causes or natural hazards beyond the control of the owner, the use or development may be restored or replaced. The restoration or replacement shall not be more out of conformance with the land use or development regulations than the original use or development.

### 19.805.2 Loss of Nonconforming Status

Restoration or replacement of nonconforming uses or development that have been partially or totally destroyed, whether intentional or by accident, must commence within 1 year from the date of destruction. If restoration or replacement does not commence within the 1-year period, the use or development will lose its nonconforming status, and any subsequent use or development on the site shall conform to all applicable land use and development regulations.

## 19.806 AMORTIZATION OF NONCONFORMING USES

### 19.806.1 Purpose

The purpose of this section is to provide a process whereby the City could require the discontinuance of nonconforming uses through amortization in a manner that is fair, predictable, and transparent.

### 19.806.2 Applicability

A. All legally established high-impact nonconforming uses, as defined in Section 19.201 and as identified on the City's inventory pursuant to Subsection 19.806.3.B, are subject to amortization and discontinuance. Illegally established uses are subject to enforcement proceedings by the City if not immediately discontinued or converted to a conforming use.

B. The following nonconforming uses are not subject to amortization and discontinuance:

1. Nonconforming uses that can be made conforming within 6 months, where the owner also enters into an agreement with the City to bring the use into conformance within 6 months.
2. Nonconforming uses that are protected under the Religious Land Use and Institutionalized Persons Act.
3. Nonconforming uses that are identified as low-impact nonconforming uses, as defined in Section 19.201.

### 19.806.3 Identification of Nonconforming Uses

A. The City Council may direct the Planning Director to evaluate existing land uses within the city for the purpose of compiling an inventory of uses subject to amortization and discontinuance. Such direction shall be made by resolution at a public meeting.

B. The Planning Director's evaluation shall be undertaken as follows:

1. Create a list of all nonconforming uses pursuant to City Council direction as provided in Subsection 19.806.3.C below.
2. Remove all properties that are exempt under Subsection 19.806.2.B from the list.
3. Determine which nonconforming uses that remain on the list are high-impact nonconforming uses, as defined by Section 19.201.
4. Compile an inventory of all properties containing a high-impact nonconforming use.

C. At the time of a vote directing the Planning Director to perform an evaluation of nonconforming uses, the Council shall specify the following:

1. The amount of time the Planning Director has to perform the evaluation, which shall be no less than 60 days.
2. Whether the Planning Director shall evaluate all uses in the entire City or whether the evaluation should be limited to a specified geographic area, type of use, or zoning district.

D. No less than 60 days after the Planning Director's completion of the inventory, City Council shall review and adopt the inventory by resolution. Upon review of the Planning Director's evaluation and inventory, Council may add or remove properties from the inventory prior to its adoption.

E. No more than 30 days after the adoption of the inventory by City Council, the Planning Director shall provide notice to all property owners listed in the nonconforming use inventory. Such notice shall include the following:

1. A statement that the City has determined that the subject property contains at least one nonconforming use that is subject to discontinuance through amortization.
2. The findings from the Planning Director's evaluation.
3. A copy of this section.
4. The date of the first evidentiary hearing before the Planning Commission to determine the schedule of amortization and discontinuance. Such a hearing shall be scheduled no less than 60 days after the mailing of the notice.

### 19.806.4 Review Process

A. For all properties with identified nonconforming uses that are included in the adopted nonconforming use inventory, the City shall require the discontinuance of such uses under a plan whereby the full value of any use-dependent structures and facilities are amortized within a definite and reasonable period of time. This action is a quasi-judicial action and shall utilize the Type IV review process pursuant to Section 19.1007. A separate hearing shall be conducted for each nonconforming use to determine the appropriate amortization schedule.

1. The approved amortization schedule shall be adopted by ordinance and shall commence upon the effective date of the ordinance.

2. The hearings conducted under this subsection, per Section 19.1007 Type IV Review, shall be limited to the determination of the following:
   a. Whether the use is properly included on the inventory.
   b. Whether the use is exempt from amortization and discontinuance under Subsection 19.806.2.B.
   c. The duration of a reasonable amortization period and all terms associated therewith, based on the evaluation criteria in Subsection 19.806.5.

B. The City Council may, by ordinance, execute a compliance agreement with the owner of any property found to contain a high-impact nonconforming use. Such an agreement shall include a schedule for the property owner to bring the property into conformance through discontinuance of all nonconforming uses in a certain amount of time or by other means acceptable to the City. Such an agreement shall alleviate the City's obligation to schedule a hearing to determine an amortization period pursuant to Subsection 19.806.4.A or, alternatively, shall supersede the established amortization period for the subject property.

C. The City shall record in the Clackamas County real estate records all ordinances adopted pursuant to this subsection.

**19.806.5 Evaluation Criteria**

The City's review authorities shall consider the following criteria, at a minimum, in determining a reasonable length of time for the amortization period:

A. Nature of the use, its operations, and structures.

B. Character of the land and land uses in the surrounding area.

C. Location of the use in relation to surrounding uses.

D. Value of the land and its improvements.

E. Length of time the use has been in existence and the length of time the use has been nonconforming.

F. Amount of capital investment in the structures or improvements on the property at the time the use became nonconforming.

G. Amount of investment realized to date and the amount remaining, if any, to be recovered during the amortization period.

H. Existence or nonexistence of lease obligations.

I. Removal costs that are directly attributable to the establishment of a discontinuance date.

J Other costs and expenses that are directly attributable to the establishment of a discontinuance date.

K. Burden on the property owner resulting from discontinuance of the use.

L. Benefit to the public resulting from discontinuance of the use.

# CHAPTER 19.900

# LAND USE APPLICATIONS

SECTIONS:

19.901 Introduction
19.902 Amendments to Maps and Ordinances
19.903 Code Interpretations and Director Determinations
19.904 Community Service Uses
19.905 Conditional Uses
19.906 Development Review
19.907 Downtown Design Review
19.908 Extensions to Expiring Approvals
19.909 Modifications to Existing Approvals
19.910 Residential Dwellings
19.911 Variances

## 19.901 INTRODUCTION

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval for all required land use applications prior to establishment or construction. Table 19.901 below contains a complete list of the City's land use applications and the location of the provisions that govern their submittal, review, and approval. It also identifies the review type(s) associated with each application type. The review type determines who is given notice about land use and development proposals, when the City has to make a decision on a land use application, and who makes the final decision. Descriptions of the different review types and the procedures associated with them are located in Chapter 19.1000. Decision makers for each review type are listed in Table 19.1001.5.

**Table 19.901**
**Land Use Applications**

| Application Type | Municipal Code Location | Review Types |
|---|---|---|
| Amendments to Maps and Ordinances: | Section 19.902 | |
| Comprehensive Plan Text Amendment | Subsection 19.902.3 | V |
| Comprehensive Plan Map Amendment | Subsection 19.902.4 | IV, V[1] |
| Zoning Text Amendment | Subsection 19.902.5 | V |
| Zoning Map Amendment | Subsection 19.902.6 | III, V[2] |
| Annexations and Boundary Changes: | Chapter 19.1100 | |
| Boundary Change | Section 19.1103 | NA |
| Expedited Annexation | Section 19.1104 | NA |
| Nonexpedited Annexation | Section 19.1102 | IV |
| Appeal | Section 19.1010 | Varies |
| Code Interpretation | Section 19.903 | I |
| Community Service Use | Section 19.904 | I, III |
| Compensation for Reduction in Property Value (Measure 37) | Chapter 1.20 | NA |
| Conditional Use | Section 19.905 | I, III |
| Development Review | Section 19.906 | I, II |
| Director Determination | Section 19.903 | I |
| Downtown Design Review | Section 19.907 | I, II, III |
| Extension to Expiring Approval | Section 19.908 | I, II |
| Historic Resource: | Section 19.403 | |
| Alteration | Subsection 19.403.5 | I, III |
| Demolition | Subsection 19.403.7 | III |
| Status Designation | Subsection 19.403.4 | IV |
| Status Deletion | Subsection 19.403.4 | IV |

[1] Level of review determined by City Attorney per Section 19.902.4.A.
[2] Level of review determined by City Attorney per Section 19.902.6.A.1.

| Table 19.901 CONTINUED<br>Land Use Applications | | |
|---|---|---|
| **Application Type** | **Municipal Code Location** | **Review Types** |
| Land Divisions: | Title 17 | |
| Final Plat | Title 17 | I |
| Lot Consolidation | Title 17 | I |
| Partition | Title 17 | II |
| Property Line Adjustment | Title 17 | I, II |
| Replat | Title 17 | I, II, III |
| Subdivision | Title 17 | III |
| Miscellaneous: | Chapters 19.500 | |
| Barbed Wire Fencing | Subsection 19.502.2.B.1.b-c | II |
| Bee Colony | Subsection 19.503.1.D | III |
| Multifamily Recycling Area | Subsection 19.504.8 | I |
| Mixed Use Overlay Review | Section 19.404 | III |
| Modification to Existing Approval | Section 19.909 | I, II, III |
| Nonconforming Use Alteration | Chapter 19.804 | III |
| Parking: | Chapter 19.600 | |
| Quantity Determination | Subsection 19.605.2 | II |
| Quantity Modification | Subsection 19.605.2 | II |
| Shared Parking | Subsection 19.605.4 | I |
| Structured Parking | Section 19.611 | II, III |
| Planned Development | Section 19.317 | IV |
| Residential Dwellings: | Section 19.910 | |
| Accessory Dwelling Unit (Type 1) | Subsection 19.910.1 | II |
| Accessory Dwelling Unit (Type 2) | Subsection 19.910.2 | III |
| Manufactured Dwelling Park | Subsection 19.910.3 | III |
| Temporary Dwelling Unit | Subsection 19.910.4 | I, III |
| Sign Review | Title 14 | Varies |
| Transportation Facilities Review | Chapter 19.700 | II |
| Variances: | Section 19.911 | |
| Use Exception | Subsection 19.911.5 | III |
| Variance | Subsection 19.911.1-4 | II, III |
| Water Quality Resource Review | Section 19.402 | I, II, III, IV |
| Willamette Greenway Review | Section 19.401 | III |

## 19.902 AMENDMENTS TO MAPS AND ORDINANCES

### 19.902.1 Purpose

This section establishes the process for amending the City's Comprehensive Plan and land use regulations within the Milwaukie Municipal Code. The approval process related to Comprehensive Plan amendments is intended to ensure compliance with State laws and administrative rules, including the 19 Statewide Planning Goals and the Metro Urban Growth Management Functional Plan, Chapter 3.07, Title III of the Metro Code. The approval process related to land use amendments is intended to ensure compliance with the Comprehensive Plan.

The goals and policies of the Comprehensive Plan are implemented, in part, through the land use regulations of the Milwaukie Municipal Code. The sections of the Municipal Code that most directly relate to implementation of the Comprehensive Plan are Title 14 Signs, Title 17 Land Division, and Title 19 Zoning.

### 19.902.2 Applicability

The requirements of Section 19.902 apply to the amendments described below.

A. Amendments to add, modify, or delete the text of the Milwaukie Comprehensive Plan or its ancillary documents.

B. Amendments to add, modify, or delete the text of Titles 14, 17, and 19 of the Milwaukie Municipal Code, or any other portion of the Milwaukie Municipal Code that constitutes a land use regulation per ORS 197.015.

C. Amendments to change the maps of the Milwaukie Comprehensive Plan, including maps within ancillary documents. Changes to these maps resulting from actions taken by Section 19.1104 Expedited Process are exempt from the requirements of Section 19.902

D. Amendments to change the "Zoning Map of Milwaukie, Oregon," which is the map established by Subsection 19.107.2. Changes to this map resulting from actions taken by Section 19.1104 Expedited Process are exempt from the requirements of Section 19.902

### 19.902.3 Comprehensive Plan Text Amendments

Changes to the text of the Milwaukie Comprehensive Plan shall be called Comprehensive Plan text amendments.

A. Review Process

Changes to the text of the Milwaukie Comprehensive Plan described by Subsection 19.902.2.A shall be evaluated through a Type V review per Section 19.1008.

B. Approval Criteria

Changes to the Milwaukie Comprehensive Plan may be approved if the following criteria are met:

1. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, as proposed to be amended.
2. The proposed amendment is in the public interest with regard to neighborhood or community conditions.
3. The public need is best satisfied by this particular proposed amendment.

4. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
5. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

### 19.902.4 Comprehensive Plan Map Amendments

Changes to the maps of the Milwaukie Comprehensive Plan shall be called Comprehensive Plan map amendments.

A. Review Process

Changes to the maps of the Milwaukie Comprehensive Plan described in Subsection 19.902.2.C shall be evaluated through either a Type IV review, per Section 19.1007, or Type V review, per Section 19.1008. The City Attorney shall have the authority to determine the appropriate review process for each Comprehensive Plan map amendment. The City Attorney's review process determination is not a land use decision per ORS 197.015 and is not subject to appeal.

Generally, Comprehensive Plan map amendments that involve 5 or more properties or encompass more than 2 acres of land are legislative in nature and subject to Type V review. Comprehensive Plan map amendments that involve fewer properties and encompass a smaller area of land are quasi-judicial in nature and subject to Type IV review.

B. Approval Criteria

Changes to the maps of the Milwaukie Comprehensive Plan shall be evaluated against the approval criteria in Subsection 19.902.3.B. A quasi-judicial map amendment shall be approved if these criteria are met. A legislative map amendment may be approved if these criteria are met.

### 19.902.5 Zoning Text Amendments

Changes to the text of land use regulations within the Milwaukie Municipal Code shall be called zoning text amendments, regardless of the individual titles involved.

A. Review Process

Changes to Titles 14, 17, or 19 of the Milwaukie Municipal Code, or any land use regulation as defined by ORS 197.015, that are described by Subsection 19.902.2.B shall be evaluated through a Type V review per Section 19.1008.

B. Approval Criteria

Changes to the Milwaukie Municipal Code described by Subsection 19.902.2.B may be approved if the following criteria are met:

1. The proposed amendment is consistent with other provisions of the Milwaukie Municipal Code.
2. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.
3. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
4. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

5. The proposed amendment is consistent with relevant federal regulations.

### 19.902.6 Zoning Map Amendments

Changes to the Zoning Map of Milwaukie, Oregon, shall be called Zoning Map amendments.

A. Review Process

1. Changes to the Zoning Map described in Subsection 19.902.2.D shall be evaluated through either a Type III review, per Section 19.1006, or Type V review, per Section 19.1008. The City Attorney shall have the authority to determine the appropriate review process for each Zoning Map amendment. The City Attorney's review process determination is not a land use decision per ORS 197.015 and is not subject to appeal.

   Generally, Zoning Map amendments that involve 5 or more properties or encompass more than 2 acres of land are legislative in nature and subject to Type V review. Zoning Map amendments that involve fewer properties and encompass a smaller area of land are quasi-judicial in nature and subject to Type III review.

2. Changes that affect both the Zoning Map and text of Titles 14, 17, or 19, or other land use regulations within the Milwaukie Municipal Code shall be evaluated through a Type V review per Section 19.1008. These changes are subject to the approval criteria of Subsections 19.902.5.B and 19.902.6.B.

B. Approval Criteria

Changes to the Zoning Map shall be evaluated against the following approval criteria. A quasi-judicial map amendment shall be approved if the following criteria are met. A legislative map amendment may be approved if the following criteria are met:

1. The proposed amendment is compatible with the surrounding area based on the following factors:
   a. Site location and character of the area.
   b. Predominant land use pattern and density of the area.
   c. Expected changes in the development pattern for the area.
2. The need is demonstrated for uses allowed by the proposed amendment.
3. The availability is shown of suitable alternative areas with the same or similar zoning designation.
4. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.
5. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.
6. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.
7. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
8. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

C. Conditions of Approval

Conditions of approval may be applied to Zoning Map amendments for purposes of fulfilling identified need for public facilities and/or meeting applicable regional, State, or federal regulations. Conditions of approval may include actual construction of facilities or a performance contract, bond, or escrow account to assure installation of public facilities to specified standards.

D. Modification of Official Zoning Map

For Zoning Map amendments not involving conditions of approval, the Zoning Map shall be modified when the adopting ordinance goes into effect. For Zoning Map amendments involving conditions of approval, the Zoning Map shall not be modified until all conditions of approval are satisfied.

E. Revocation

If conditions of approval are not met within 2 years of ordinance adoption, the Planning Commission shall hold a public hearing to consider the revocation of the approved zoning through a Type III review per Section 19.1006. The Planning Commission may also, upon determination that the applicant is making satisfactory progress towards completing conditions of approval, grant a one-time extension not to exceed a maximum of 2 years.

## 19.903 CODE INTERPRETATIONS AND DIRECTOR DETERMINATIONS

### 19.903.1 Purpose

The purpose for both code interpretations and Director determinations is to allow for discretionary rulings on the interpretation and application of the provisions of land use regulations. The most common instances for which such rulings are required are where the text of the land use regulation is unclear, where a determination is needed about the similarity of a proposed use and uses that are allowed outright, and where a determination is requested regarding the legal status of a use or property. The initial decisions on these matters are to be made by the Planning Director at an administrative level with the option for appeal.

Code interpretations are not intended to substitute for legislative amendments to land use regulations. Code interpretations may, however, be used as an interim measure to allow the City's land use regulations to be applied consistently with regional, State, or federal requirements until legislative amendments can be made.

### 19.903.2 Applicability

The provisions of Section 19.903 apply to the situations described below.

A. A code interpretation may be made where the language of Titles 14, 17, or 19 is unclear in its terms, meaning, or intent. An interpretation is not necessary where the meaning of the code is unambiguous and no discretion is required in its interpretation. An interpretation is prohibited in either of the following situations:

   1. The code interpretation may affect the evaluation of approval standards or criteria for any quasi-judicial land use application that is currently under review by the City.

   2. The code interpretation is being sought as a remedy to a violation of the Milwaukie Municipal Code for which the City has issued a citation and the citation is pending judgment or sentencing.

B. A Director determination may be requested for the following situations.

   1. Determination of whether a use is similar in nature to other uses allowed outright within a zone. A formal determination is not necessary where the comparison is obvious and the decision is nondiscretionary.

   2. Determination of the legal status of a nonconforming use or development.

   3. Determination of the legal status of a unit of land.

   4. Determination for any other situation where a discretionary decision is needed to review the facts of a situation and make determination as to the status, category, allowance, etc. per Titles 14, 17, or 19. This process is not available for provisions that specifically state that a decision under that provision cannot be appealed.

### 19.903.3 Review Process

A. General Provisions

   1. Code interpretations are initiated by application to the City. The applicant may be any member of the public, the Planning Director, Planning Commission, or City Council. The Planning Director will decide within 14 days of receipt of an application whether to refuse or accept the request and issue an interpretation. Any application fees will be refunded if a request is refused.

   2. Director determinations are initiated by application to the City.

B. Review Procedures

1. Code interpretations are evaluated through a Type I review per Section 19.1004. In addition to other notice provisions, a copy of the notice of decision shall be sent to the Planning Commission and City Council.
2. Director determinations are evaluated through a Type I review per Section 19.1004.

**19.903.4 Approval Criteria**

A. Code Interpretations

Code interpretations are different from other land use applications in that they are an interpretation of language, policy, and legal matters, as opposed to an evaluation of a use or development. A code interpretation shall be as consistent as possible with the criteria listed below. Not all of the criteria need to be met for a code interpretation to be issued.

1. The proposed interpretation is consistent with the common meaning of the words or phrases at issue.
2. The proposed interpretation is consistent with relevant policy direction from official City documents such as the Comprehensive Plan and its ancillary documents.
3. The proposed interpretation is consistent with the legislative intent for the words or phrases at issue. The intent is based on the legislative record for the ordinance that adopted or amended the regulations at issue.
4. The proposed interpretation is consistent with the interpretation of other portions of the Milwaukie Municipal Code.
5. The proposed interpretation is consistent with regional, State, and federal laws and court rulings that affect the words or phrases at issue.

B. Director Determinations

1. Similar Use

Director determinations of similar use shall be based on the following criteria:

a. The proposed use and uses that are allowed outright are comparable with respect to the characteristics described below.

(1) Hours of operation.

(2) Generation of off-site impacts such as noise, lighting glare, dust, and odors.

(3) Employment and customer characteristics.

b. The proposed use is consistent with the stated purpose, if available, of the zone under consideration.

c. The base zone of the property where the use is proposed is reasonably similar to other zones where the proposed use is allowed outright.

d. The proposed use is consistent with the goals and policies of the Comprehensive Plan regarding the appropriate locations within the city for the proposed use.

2. Legal Status of a Nonconforming Use or Development

Director determinations of legal status of a nonconforming use or development shall be based on the following criteria:

a. The nonconforming use or development was permitted under applicable regulations at the time it was established. Evidence to address this criterion may include the following items:

(1) Copies of building and/or land use permits issued at the time the use, structure, or site improvement was established.

(2) Copies of zoning code provisions and/or maps in place at the time use, structure, or site improvement was established.

(3) Demonstration that the use, structure, or site improvement was established before the applicable development code for the community was adopted.

b. The nonconforming use has been legally maintained over time and has not been discontinued or abandoned, as described by Subsection 19.803.2. Evidence to address this criterion may include the following items:

(1) Utility bills.

(2) Income tax records.

(3) Business licenses.

(4) Listings in telephone, business, and Polk directories.

(5) Advertisements in dated publications; e.g., trade magazines.

(6) Building, land use, or development permits.

3. Legal Status of a Unit of Land

Director determinations of the legal status of a unit of land shall evaluate the date of creation or boundary change for the units of land in question and determine whether the required City, County, and State approvals were granted at that time to approve the land division or boundary change.

Evidence that required approvals were granted may include the following items:

a. Title report, including related instruments of conveyance.

b. Plats on file with the Clackamas County Surveyor.

c. Deeds recorded with the Clackamas County Recorder.

d. Land use applications and decisions from the City of Milwaukie or Clackamas County.

4. Other

The Planning Director may make other determinations, aside from similar use, legal status of a nonconforming use or development, or legal status of a unit of land. Such a determination shall evaluate the specific facts concerning the determination request and make a ruling of how to apply the provisions of Title 14, 17 or 19, or other land use regulations within the Milwaukie Municipal Code. The approval criteria for this determination are as follows:

a. The determination is consistent with relevant policy direction from official City documents such as the Comprehensive Plan and its ancillary documents.

b. The determination is consistent with the purpose or intent statements, if available, in the applicable sections of code.

c. The determination is consistent with the legislative intent for the words or phrases at issue. The intent is based on the legislative record for the ordinance that adopted or amended the regulations at issue.

d. The determination is consistent with any legal opinions from the City Attorney.

**19.903.5 Other Provisions for Code Interpretations and Director Determinations**

A. Code Interpretations

1. Code interpretations shall control the future application of the sections of the Milwaukie Municipal Code to which they pertain unless superseded by a subsequent code interpretation or legislative change to the Milwaukie Municipal Code.

2. The Planning Director shall maintain current code interpretations on file at the Planning Department's offices for public review.

B. Director Determinations: Similar Use and Other

1. Director determinations issued under Subsections 19.903.4.B.1 and 4 are based on the specific facts presented for each determination. Director determinations issued by the City may be relied upon for future determinations where circumstances are similar, but do not necessarily set precedent for subsequent code determinations.

2. Issuance of a Director determination does not obligate the City to issue any permit or preclude code enforcement action if the situation evaluated by the City differs from what was presented in the determination request.

3. A Director determination issued under Subsection 19.903.4.B.1 or 4 does not expire unless the code used for the determination is amended.

C. Director Determinations: Legal Status of a Nonconforming Use or Development or Unit of Land

1. An applicant for a Director determination issued under Subsection 19.903.4.B.2 or 3 may request a subsequent determination if new evidence or materials become available.

2. The City may pursue code enforcement to correct a violation of the Milwaukie Municipal Code following a Director determination where evidence is clear that a use, land division, or boundary change was illegally established.

## 19.904 COMMUNITY SERVICE USES

### 19.904.1 Purpose

This section allows development of certain uses which, because of their public convenience, necessity, and unusual character, may be appropriately located in most zoning districts, but which may be permitted only if appropriate for the specific location for which they are proposed. This section provides standards and procedures for review of applications for such community uses. Community service uses may be sited in any zone, except where expressly prohibited, if they meet the standards of this section. Approval of a CSU does not change the zoning of the property.

### 19.904.2 Applicability

Any community service use shall be subject to the provisions of this section. Application must be submitted to establish or modify a community service use. Community service uses include certain private and public utilities, institutions, and recreational facilities as listed below:

A. Institutions—Public/Private and Other Public Facilities

1. Schools, public or private, and their accompanying sports facilities, day-care centers, private kindergartens;
2. Government office buildings for local, state, or federal government such as a City hall, courthouse, police station, or other similar buildings;
3. Hospital;
4. Cemetery;
5. Nursing or convalescent home;
6. Religious institutions;
7. Community meeting building;
8. Temporary or transitional facility;
9. Other similar uses as determined by the Planning Commission.

B. Utilities

1. Sewage pumping stations;
2. Water wells, pump stations, reservoirs, and any other facilities used for production, treatment, and distribution of the municipal water supply;
3. Electrical power substations;
4. Public works shops, road shops, yards, bus barns, equipment and material storage yards, and other similar uses;
5. Public transit facilities;
6. Passenger terminal;
7. Other similar uses as determined by the Planning Commission.

C. Recreation Facilities—Public or Private

1. Private club, lodge, grange;
2. Public and/or privately owned parks and golf courses;

3. Pedestrian and bicycle trails;
4. Public or private recreational facilities such as pools, gyms, indoor and outdoor sports courts or fields, and associated facilities;
5. Other similar uses as determined by the Planning Commission.

D. Communication Facilities

1. Telephone switching station;
2. Telephone, microwave facilities;
3. Radio and television transmission facilities, including studios;
4. Wireless communication facilities.

**19.904.3 Review Process**

Except as provided in Subsections 19.904.5.C for minor modifications and 19.904.11 for wireless communication facilities, community service uses shall be evaluated through a Type III review per Section 19.1006.

**19.904.4 Approval Criteria**

A. An application for a community service use may be allowed if the following criteria are met:

1. The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in the underlying zone are met. Where a specific standard is not proposed in the CSU, the standards of the underlying zone are met;
2. Specific standards for the proposed uses as found in Subsections 19.904.7-11are met;
3. The hours and levels of operation of the proposed use are reasonably compatible with surrounding uses;
4. The public benefits of the proposed use are greater than the negative impacts, if any, on the neighborhood; and
5. The location is appropriate for the type of use proposed.

**19.904.5 Procedures for Reviewing a Community Service Use**

A. The Planning Commission will hold a public hearing on the establishment of, or major modification of, the proposed community service use. If the Commission finds that the approval criteria in Subsection 19.904.4 are met, the Commission shall approve the designation of the site for community service use. If the Commission finds otherwise, the application shall be denied. An approval allows the use on the specific property for which the application was submitted, subject to any conditions the Planning Commission may attach.

B. In permitting a community service use or the modification of an existing one, the City may impose suitable conditions which assure compatibility of the use with other uses in the vicinity. These conditions may include but are not limited to:

1. Limiting the manner in which the use is conducted by restricting the time an activity may take place and by minimizing such environmental effects as noise and glare;
2. Establishing a special yard, setback, lot area, or other lot dimension;
3. Limiting the height, size, or location of a building or other structure;

4. Designating the size, number, location, and design of vehicle access points;
5. Increasing roadway widths, requiring street dedication, and/or requiring improvements within the street right-of-way including full street improvements;
6. Designating the size, location, screening, drainage, surfacing, or other improvement of a parking area or truck loading area; and/or
7. Limiting or otherwise designating the number, size, location, height, and lighting of signs.

C. The Planning Director may approve minor modifications to an approved community service per Section 19.1004 Type I Review, provided that such modification:

1. Does not increase the intensity of any use;
2. Meets all requirements of the underlying zone relating to building size and location and off-street parking and the standards of Title 19;
3. Does not result in deterioration or loss of any protected natural feature or open space, and does not negatively affect nearby properties;
4. Does not alter or contravene any conditions specifically placed on the development by the Planning Commission or City Council; and
5. Does not cause any public facility, including transportation, water, sewer and storm drainage, to fail to meet any applicable standards relating to adequacy of the public facility.

**19.904.6 Application Requirements**

An application for approval of a community service use shall include the following:

A. Name, address and telephone number of applicant and/or property owner;

B. Map number and/or subdivision block and lot;

C. Narrative concerning the proposed request;

D. Copy of deed, or other document showing ownership or interest in property. If applicant is not the owner, the written authorization from the owner for the application shall be submitted;

E. Vicinity map;

F. Comprehensive plan and zoning designations;

G. A map showing existing uses, structures, easements, and public utilities and showing proposed development, placement of lot lines, etc.;

H. Detailed plans for the specific project;

I. Any information required by other applicable provisions of local, state or federal law;

J. Proof of payment of the applicable fees;

K. Additional drawings, surveys or other material necessary to understand the proposed use may be required.

**19.904.7 Specific Standards for Schools**

Public, private or parochial, elementary, secondary, preschool, nursery schools, kindergartens, and day-care centers are included.

A. Public elementary or secondary schools shall provide the site area/pupil ratio required by state law. Other schools shall provide 1 acre of site area for each 75 pupils of capacity or for each 2½ classrooms, whichever is greater, except as provided in Subsection 19.904.7.B below.

B. Preschools, nursery schools, day-care centers, or kindergartens shall provide a fenced, outdoor play area of at least 75 sq ft for each child of total capacity, or a greater amount if so required by state law. In facilities where groups of children are scheduled at different times for outdoor play, the total play area may be reduced proportionally based on the number of children playing out-of-doors at one time. However, the total play area may not be reduced by more than half. These uses must comply with the State Children's Services Division requirements as well as the City provisions.

C. Walkways, both on and off the site, shall be provided as necessary for safe pedestrian access to schools subject to the requirements and standards of Chapter 19.700.

D. Sight-obscuring fence of 4 to 6 ft in height shall be provided to separate the play area from adjacent residential uses.

E. Public facilities must be adequate to serve the facility.

F. Safe loading and ingress and egress will be provided on and to the site.

G. Off-street parking (including buses) shall be provided as per Chapter 19.600.

H. Minimum setback requirements:

Front yard: 20 ft

Rear yard: 20 ft

Side yard: 20 ft

Setbacks may be increased depending on the type and size of school in order to ensure adequate buffering between uses and safety for students.

I. Bicycle facilities are required which adequately serve the facility.

J. 15% of the total site is to be landscaped.

**19.904.8 Specific Standards for Nursing or Convalescent Homes**

A. Public services must be adequate to serve the facility.

B. Facilities will access on arterial or collector streets.

C. Setbacks must be the greater of 25 ft or the setback of an adjacent residential zone or of the underlying zone.

D. Maximum height shall not exceed 45 ft.

E. Buffering of noise and light from adjacent streets and between adjacent properties may be required.

F. Sites which could cause hazard to disoriented patients through proximity to heavily traveled streets, water hazards, or ravines or steep slopes shall not be approved unless the applicant can satisfy the commission that safety measures will be used to prevent injury to patients.

G. On parcels surrounded by existing dwellings, additional conditions may be necessary to:

1. Mitigate the effects of traffic caused by shift changes, particularly regarding noise at night and safety of school children in transit; and/or

2. Maintain neighborhood scale, particularly regarding size of structure, width of driveway, signs, exterior lighting, and placement of parking facilities.

H. Conversion of existing dwellings may be allowed if state codes and rules can be met and the conditions of this subsection are satisfied.

I. Off-street parking must be provided as per Chapter 19.600.

J. 15% of the total site is to be landscaped.

**19.904.9 Specific Standards for Institutions—Public, Private, Religious, and Other Facilities not Covered by Other Standards**

A. Utilities, streets, or other improvements necessary for the public facility or institutional use shall be provided by the agency constructing the use.

B. When located in or adjacent to a residential zone, access should be located on a collector street if practicable. If access is to a local residential street, consideration of a request shall include an analysis of the projected average daily trips to be generated by the proposed use and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the use. Uses which are estimated to generate fewer than 20 trips per day are exempted from this subsection.

C. When located in a residential zone, lot area shall be sufficient to allow required setbacks that are equal to a minimum of ⅔ the height of the principal structure. As the size of the structure increases, the depth of the setback must also increase to provide adequate buffering.

D. The height limitation of a zone may be exceeded to a maximum height of 50 ft provided Subsection 19.904.9.C of this subsection is met.

E. Noise-generating equipment shall be sound-buffered when adjacent to residential areas.

F. Lighting shall be designed to avoid glare on adjacent residential uses and public streets.

G. Where possible, hours and levels of operation shall be adjusted to make the use compatible with adjacent uses.

H. A spire on a religious institution may exceed the maximum height limitation. For purposes of this subsection, "spire" means a small portion of a structure that extends above the rest of the roofline, or a separate structure that is substantially smaller than the main structure and extends above the roofline of the main structure. "Spire" includes but is not limited to ornamental spires, bell towers, other towers, minarets, and other similar structures or projections. The number of spires on a religious institution property is not limited, so long as the spires remain only a small portion of the area of the structures.

I. The minimum landscaping required for religious institutions is the lesser of 15% of the total site area and the percentage required by the underlying zone.

J. Park-and-ride facilities may be encouraged for institutions along transit routes that do not have days and hours in conflict with weekday uses (e.g., religious institutions or fraternal organizations). Such uses may be encouraged to allow portions of their parking areas to be used for park-and-ride lots.

### 19.904.10 Specific Standards for Solid Waste Facilities

A. Hours of Operation

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

B. Traffic

No solid waste facility shall be approved except where all vehicular access to and from the solid waste facility site is via a City of Milwaukie designated arterial street or Oregon Department of Transportation highway. No solid waste facility shall be approved unless consistent with the Level of Service standards of Chapter 19.700.

C. Litter Control

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

D. Noise

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

E. Storage

All materials shall be stored within an enclosed building except as follows:

1. Where all materials are stored within an area enclosed by a solid, opaque wall or fence 8 ft or more in height and landscaped along all street frontages, and,
2. When located at least 250 ft from property planned, zoned, or used as residential, and,
3. Where all materials are nonputrescible.

F. After-Hours Use

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

G. Glare

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

H. Materials Handled

No hazardous wastes, as defined and regulated by ORS 466.005 as amended, shall be disposed on the site.

### 19.904.11 Standards for Wireless Communication Facilities

A. Applicability

The placement, construction, or modification of wireless communication facilities are subject to the provisions of this subsection.

B. Purpose

The purpose of this subsection is to establish regulations for the siting of wireless communication facilities to allow service to the community while protecting the community from clutter and designs which are not consistent with existing and future land uses.

The goals of this subsection are to:

1. Enhance the ability of providers of wireless communication to provide comprehensive service to the community.
2. Minimize the number of towers throughout the community.
3. Encourage facilities to be located in areas least disruptive to residential, park, natural resource, and Willamette Greenway areas.
4. Encourage co-location of wireless communication facilities.
5. Preserve and improve the appearance of the City by encouraging the use of existing buildings, lights, utility poles, water towers, and stealth designs, instead of constructing new towers or support structures.
6. Minimize the visual impact on the immediate surroundings and throughout the community by ensuring that all new wireless communication facilities (WCFs) are located and constructed in such a manner so as to avoid adverse impacts on their surrounding settings.

C. Application Process

1. Placement, construction, or modification of WCFs not involving the construction of a new monopole are subject to Section 19.1005 Type II Review, provided that the antennas and base equipment comply with the standards contained in this subsection. Also see Table 19.904.11.C.
2. All proposed new monopole towers are subject to Section 19.1006 Type III Review. Also see Table 19.904.11.C.

**Table 19.904.11.C**
**Wireless Communication Facilities—Type and Review Process**

| Towers | | WCFs Not Involving New Tower | | |
|---|---|---|---|---|
| Zones | New Monopole Tower 100 Feet | Building Rooftop or Wall Mounted Antenna [1] | Water Towers, Existing Towers, and Other Stealth Designs | On Existing Utility Pole in Row with or w/out Extensions [2] |
| BI | P1 | P2 | P2 | P2 |
| M | P1 | P2 | P2 | P2 |
| C-N | N | P2 | P2 | P2 |
| C-G | N | P2 | P2 | P2 |
| C-L | N | P2 | P2 | P2 |
| C-CS | N | P2 | P2 | P2 |
| DC | N | P2 | P2 | P2 |
| DR | N | P2 | P2 | P2 |
| DO | N | P2 | P2 | P2 |
| DS | N | P2 | P2 | P2 |
| R-O-C | N | P2 | P2 | P2 |

| Table 19.904.11.C CONTINUED<br>Wireless Communication Facilities—Type and Review Process | | | | |
|---|---|---|---|---|
| Towers | | WCFs Not Involving New Tower | | |
| Zones | New Monopole Tower 100 Feet | Building Rooftop or Wall Mounted Antenna [1] | Water Towers, Existing Towers, and Other Stealth Designs | On Existing Utility Pole in Row with or w/out Extensions [2] |
| R-1-B | N | P2 | P2 | P2 |
| R-1 | N | N | P2 | P2 |
| R-2 | N | N | P2 | P2 |
| R-2.5 | N | N | P2 | P2 |
| R-3 | N | N | P2 | P2 |
| R-5 | N | N | P2 | P2 |
| R-7 | N | N | P2 | P2 |
| R-10 | N | N | P2 | P2 |

**1** = Type III review—requires a public hearing in front of the Planning Commission

**2** = Type II review—provides for an administrative decision

**P** = Permitted **N** = Not Permitted

[1] Rooftop extensions are not to exceed 15 ft in height above the roof top and are not to project greater than 5 ft from the wall of a building.

[2] Antennas placed on right-of-way utility poles may be extended 15 ft. If the pole cannot be extended, the carrier may replace the pole. The replacement utility pole shall not exceed 15 ft in height of the pole that is to be replaced.

D. Application Submittal requirements

In addition to the required submittal material the following must also be included with the application:

1. Applications for a WCF that will include a new monopole tower:
   a. A narrative description of:
      (1) Tower location;
      (2) Design;
      (3) Height;
      (4) Antenna location and type for all planned antennas;
      (5) Indication of the number of additional antennas the tower will be able to accommodate.
   b. Type of antennas the tower is designed to accommodate; and
   c. Reason for the location, design and height of the proposed tower and antenna.
   d. A photo simulation of the proposed tower in relation to the surrounding area.
   e. A signed agreement binding present and future owners or operators of the WCF that allows co-location of antennas on the WCF.
   f. Documentation that all necessary applications, permits, agreements and easements have been obtained.

g. Documentation of FAA or satisfactory evidence that FAA approval is not required. Satisfactory evidence that FAA approval is not required shall be an Aerospace Safety Analysis Corporation determination or similar evidence.

h. The signature of the property owner(s) on the application form or a written signed statement from the property owner(s) granting authorization to proceed with the land use application and building permits.

i. Documentation that alternative antenna support locations within 1,500 ft have been considered and have been determined to be technologically or legally infeasible or inadequate. The applicant shall pay to the City the costs of hiring a third party to review the application for accuracy in accordance with the fee resolution adopted by the City Council.

j. In addition to those items required on the site plan requirements, the following must also be included:

(1) Landscaping plan showing existing and proposed vegetation, including size, type and the amount of proposed vegetation;

(2) Location of connections to utilities and right-of-way curb cuts;

(3) Location of required easements and access drives;

(4) Location of the proposed wireless communication facility and related base equipment;

(5) The lease area in relation to the underlying parcel/property as well as neighboring parcels on all sides.

2. WCF Not Including a New Tower

a. Detailed narrative description describing the proposed antenna location, design and height.

b. Statement that antenna was placed so as to allow for placement of additional antennas on the same antenna support structure, to the extent practicable.

c. Documentation demonstrating the proposal has been submitted and approved by the owner of the structure to which the antenna will be attached.

d. Document demonstrating that necessary applications, permits, agreements, and easements have been obtained.

e. For extensions to existing facilities the applicant shall provide documentation of FAA approval of the tower design or satisfactory evidence that FAA approval is not required. Satisfactory evidence that FAA approval is not required shall be an Aerospace Safety Analysis Corporation determination or similar evidence.

f. The site plan must include the elements listed on the site plan requirements and must also include, to the extent applicable:

(1) Landscaping plan showing existing and proposed vegetation, include size, type and amount of proposed vegetation. In some cases, such as co-location on rooftops or other similar uses, the City may determine that landscaping will not be required;

(2) Location of connections to utilities and right-of-way curb cuts;

(3) Location of required easements and access drives;

(4) Location of proposed related base equipment and existing WCF;

(5) Lease area in relation to the underlying parcel/property as well as neighboring parcels on all sides.

E. Use of Existing Tower or Antenna Support Structure

1. All wireless communication providers are required to attempt to co-locate on existing antenna support structures or locate on alternative antenna support structures before applying to construct a WCF that will include a new tower.

2. New towers shall not be approved unless the applicant demonstrates to the reasonable satisfaction of the Planning Director that no existing towers or alternative antenna support structure can accommodate the applicant's need for the placement of an antenna in the vicinity of the applicant's proposed location. Evidence demonstrating that use of an existing or alternative support structure is not possible shall be submitted to the Planning Director and shall include one or more of the following:

   a. That no existing antenna support structures are located within the geographic area which meet the applicant's engineering requirements in regards to location, size, and structural strength and that alternative antenna support structures are not feasible.

   b. That use of any existing structure would cause electromagnetic interference with the existing antennas and electronic and other radio frequencies.

   c. That co-locating on an existing antenna support structure would violate RF emissions standards set by the FCC.

   d. That fees, costs or contractual provisions required by the owner in order to use an existing antenna support structure are unreasonable. A refusal by the owner to allow co-location shall be considered an unreasonable provision.

3. Evidence demonstrating that alternative support structures were considered, but determined to be technologically insufficient, submitted to the Planning Director for review must be verified and stamped by an engineer licensed in the State of Oregon.

4. All wireless communication providers shall cooperate with other wireless communication providers and act in good faith in co-locating additional antennas on existing support structures and/or existing buildings or other alternative support structures. All support structures 80 ft in height or greater shall be designed to not preclude co-location. All support structures 80 ft or greater shall be designed to hold additional antennas that are substantially similar to the proposed antennas array.

F. Location and Size Restrictions

1. Separation for New Monopole Towers

   New monopole towers may not be constructed within 1,500 ft of any preexisting tower. The Planning Commission has the authority to approve a reduction in the minimum separation requirement to not less than 1,000 ft, provided that the applicant can demonstrate the need to the satisfaction of the Planning Commission, for the distance reduction. A tower shall include any preexisting tower or any tower for which the City has issued a building permit, or for which a land use application has been filed and not denied. This distance shall be measured in a straight line from the base of the existing tower to the base of the proposed tower.

2. Height: maximum heights. Also see Table 19.904.11.C.

   a. Height Restrictions

      The maximum height limitation of the monopole tower and antennas shall not exceed the following:

      (1) BI and M Zones: 100 ft.

      (2) New towers are not permitted in the R-1-B, R-1, R-2, R-2.5, R-3, R-5, R-7, R-7PD, R-10, R-10PD, R-O-C, C-N, C-G, C-L, DC, DR, DO, DS and the DOS Zones.

   b. For co-location on existing towers extensions or pole replacements shall be permitted, but are not to exceed 120 ft.

   c. Antennas on buildings may not extend greater than 15 ft from the rooftop, or shall not project more than 5 ft from the side of a building.

   d. For antennas on utility poles in the right-of-way, a 15-ft extension is permitted. The carrier may replace the existing pole with a new utility pole not to exceed 15 ft above the height of the pole that is to be replaced. Equipment cabinets shall be attached to the utility pole. Where this is not practicable, the base equipment shall be subject to requirements of Subsection 19.904.11.G.1.b.

G. Development Standards for All WCFs

1. Setbacks and Equipment Cabinets

   a. Setbacks for new monopole towers and equipment cabinets shall be established from the property line and not the leased area. Regardless of the zone, the setbacks shall be as follows:

      (1) Front yard. A front yard shall be at least 75 ft.

      (2) Side yard. A side yard shall be at least 15 ft.

      (3) Rear yard. A rear yard shall be at least 20 ft.

      (4) For all properties abutting residential zones, a 75-ft setback shall be maintained from the border of the residential zone.

      (5) The equipment cabinet shall meet the vegetative screening requirements addressed in Subsection 19.904.11.G.6 Landscaping and Fencing Requirements.

   b. For antennas placed on existing utility pole and other support structures located in the right-of-way, the equipment cabinet shall be located on the utility pole to the greatest extent.

      If it is technologically infeasible to place the equipment cabinet directly on the utility pole due to cabinet size then the cabinet shall be placed in an underground vault in the right-of-way.

      If it is not technologically feasible to place the cabinet in an underground vault then the following setbacks and standards shall apply:

      (1) The equipment cabinet may be located in the right-of-way provided the equipment cabinet does not exceed a length and width of 3 ft by 2 ft and 4 ft in height.

(2) If the equipment cabinet is larger than 3 ft by 2 ft and 4 ft in height, then the following setbacks shall apply regardless of the zone:

Front yard: Equipment cabinets are not permitted within the front yard setback.

Side yard: shall be at least 15 ft from the property line.

Rear yard: shall be at least 20 ft from the property line.

(3) The equipment cabinet shall meet the vegetative screening requirements addressed in Subsection 19.904.11.G.6 Landscaping and Fencing Requirements.

c. Equipment cabinets for water towers, "stealth" designs or other antenna support structures not covered by the previous subsections.

(1) Regardless of the zone the following setbacks shall apply:

Front yard: Equipment cabinets are not permitted within the front yard setback.

Side yard: shall be at least 15 ft from the property line.

Rear yard: shall be at least 20 ft from the property line.

(2) The equipment cabinet shall meet the vegetative screening requirements addressed in Subsection 19.904.11.G.6 Landscaping and Fencing Requirements.

2. Ladder Rungs

No ladder rungs or climbing pegs on new towers or poles shall be allowed within 20 ft of the ground.

3. Guy Anchorage and Lattice Towers

Lattice or guyed towers shall not be permitted in any zone.

4. Lighting

a. The minimum security lighting necessary, as required by the FAA, to secure the tower shall be permitted. All security lighting must be directed downward onto the tower compound itself.

b. Lights on existing antenna support structures may remain.

5. Noise

When the property and adjacent properties are zoned for residential uses or occupied by hospitals, schools, libraries, nursing homes or other similar uses, noise-generating equipment shall be sound buffered so that nighttime noise after construction is no louder than the ambient nighttime noise prior to construction of the WCF. The nighttime noise shall be measured between the hours of 10:00 p.m. and 7:00 a.m. Emergency backup generators shall be excluded from this noise requirement.

6. Landscaping

A landscaping plan, which demonstrates how the proposed vegetation will effectively screen the view of the base of the tower, equipment cabinets, and the security fence, shall be submitted with the application. The landscaping plan shall include the following:

a. New Monopoles

(1) A 6-ft high security fence shall be placed around the base of the monopole and the equipment cabinets.

(2) The landscaping shall include a screen of plants with an anticipated height at time of maturity of at least 6 ft. Plantings shall be placed densely so as to form a screen.

(3) Landscaping shall be kept healthy and maintained.

b. Equipment cabinets for antennas placed on alternative support structures located out of the right-of-way.

(1) The landscaping shall include a screen of plants with an anticipated height at time of maturity of at least 6 ft. Plantings shall be placed densely so as to form a screen.

(2) Landscaping shall be compatible with native vegetation found in the surrounding area, if any.

(3) Landscaping shall be kept healthy and maintained.

c. Landscaping is not required for equipment cabinets located on buildings, or in the right-of-way.

d. In some cases equipment cabinets may be placed in areas where landscaping may not be practical. For Type II land use applications, the applicant may request that the Planning Director waive landscaping requirements. For Type III land use applications, the applicant may request that the Planning Commission waive landscaping requirements.

7. Access Drives

All newly created access drives shall meet the following standards:

a. The driveway shall not exceed 10 ft in width.

b. On a site with an existing use, access to the site shall be achieved through existing drives to the greatest extent practicable.

c. Any portion of the access drive located within the front yard of a parcel shall be paved with asphalt or concrete.

8. Signage

a. Advertising is not permitted.

b. Identification signs are permitted, but are not to exceed 4 sq ft in area.

c. Additional signage as required by law shall be permitted.

9. Discontinued Use of and Removal of WCFs

a. Any WCF not operated for a continuous period of 6 months shall be considered abandoned. The WCF owner is required to remove all abandoned facilities and base equipment within 90 days after notice from the City of Milwaukie.

b. If the owner of the WCF cannot be located or is no longer in business, it shall be the responsibility of the landowner on whose property the WCF is located to remove the abandoned facility and base equipment.

10. Affirmative Duty to Keep City Informed

    a. All operators of WCFs within the City of Milwaukie shall be required to report in writing to the Planning Director any changes in the status of their operation. The report shall include any of the following changes:

        (1) Changes in or loss of FCC license from the FCC to operate;

        (2) Receipt of notice of failure to comply with the regulations of any other authority over the business or facility;

        (3) Loss or termination of lease for the WCF for a period of 6 months or longer.

    b. An annual written statement shall be filed with the Planning Director verifying continued use of each of their facilities in the City's jurisdiction as well as continued compliance with State and federal agency regulations.

H. Expiration of Approval

Authorization under Section 19.904 shall be void after 6 months unless substantial construction has taken place. If substantial construction has not taken place and the approval becomes void, the facility must be completely removed and the site must return to its preexisting condition.

## 19.905 CONDITIONAL USES

### 19.905.1 Purpose

The purpose of the conditional use regulations is to evaluate the establishment of certain uses that may be appropriately located in some zoning districts, but only if appropriate for the specific site on which they are proposed.

Conditional uses are not allowed outright. Although they may provide needed services or functions in the community, they are subject to conditional use review because they may adversely change the character of an area or adversely impact the environment, public facilities, or adjacent properties. The conditional use review process allows for the establishment of conditional uses when they have minimal impacts or when identified impacts can be mitigated through conditions of approval. The review process also allows for denial when concerns cannot be resolved or impacts cannot be mitigated.

Approval of a conditional use shall not constitute a zone change and shall be granted only for the specific use requested. Approval is subject to such modifications, conditions, and restrictions as may be deemed appropriate by the review authority.

### 19.905.2 Applicability

A. This section applies to the establishment of a use identified as a conditional use in the base zone in Chapter 19.300 and any overlay zones in Chapter 19.400 that are applicable to the property on which the use is proposed.

B. This section applies to the major or minor modification of existing conditional uses.

C. This section does not apply to modification of uses that received conditional use approval at one time but are currently allowed outright by the property's base zone and any overlay zones.

### 19.905.3 Review Process

A. Establishment of a new conditional use, or major modification of an existing conditional use, shall be evaluated through a Type III review per Section 19.1006.

B. Minor modification of an existing conditional use shall be evaluated through a Type I review per Section 19.1004.

### 19.905.4 Approval Criteria

A. Establishment of a new conditional use, or major modification of an existing conditional use, shall be approved if the following criteria are met:

1. The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.
2. The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.
3. All identified impacts will be mitigated to the extent practicable.
4. The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by uses allowed outright at the proposed location.
5. The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones, and the standards in Section 19.905.

6. The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.
7. Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.

B. Minor modification of an existing conditional use shall be approved if the following criteria are met:

1. The proposed modification will not significantly increase the intensity of the use at this location.
2. The proposed modification will comply with all applicable development standards and requirements of the base zone, any overlay zones, and the standards in Section 19.905.
3. The proposed modification will not negatively impact nearby uses, protected natural features, or public facilities more than the original conditional use.
4. The proposed modification will comply with any conditions of approval from the original conditional use approval.

### 19.905.5 Conditions of Approval

The Planning Commission, or Planning Director in the case of minor modifications, may impose conditions of approval that are suitable and necessary to assure compatibility of the proposed use with other uses in the area and minimize and mitigate potential adverse impacts caused by the proposed use.

Conditions of approval may include, but are not limited to, the following aspects of the proposed use:

A. Limiting the hours, days, place, and manner of operation.

B. Requiring structure and site design features that minimize environmental impacts such as those caused by noise, vibration, air pollution, glare, odor, carbon emissions, and dust.

C. Requiring additional front, rear, or side yard width.

D. Limiting building height, size, or location or limiting lot coverage.

E. Limiting or otherwise designating the size, number, or location of vehicle access points from the street.

F. Requiring additional landscaping or screening of off-street parking and loading areas.

G. Limiting or otherwise designating the location, intensity, and shielding of outdoor lighting.

H. Requiring screening or landscaping for the protection of surrounding properties.

I. Requiring and designating the size, height, location, and materials for fences.

J. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, and drainage areas.

K. Requiring adequate public transportation facilities and public utilities prior to occupancy.

### 19.905.6 Conditional Use Permit

A. The City will issue a conditional use permit upon the approval of an application to establish a conditional use or allow major modification of an existing conditional use. The Planning

Director may decide if it is necessary to revise an existing conditional use permit after approval of a minor modification.

B. The conditional use permit shall include the following information:

1. A description of the use that has been approved by the City.
2. Restrictions and/or conditions of approval placed upon the use.
3. Ongoing responsibilities required for the operation of the conditional use.
4. Allowance for the transfer of rights and responsibilities upon change in ownership of either the use or the property containing the use.
5. Procedures for review, revisions, and suspension of the conditional use permit.

C. The applicant must record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit.

D. A conditional use permit is not affected by a change in ownership of the use or the property containing the use. A conditional use permit is valid unless one of the following occurs:

1. There is a change in use.
2. The permit is suspended per the procedures in Subsection 19.905.6.
3. The use is discontinued as described in Subsection 19.905.8.

E. Compliance with the terms and conditions of the conditional use permit is required on an ongoing basis.

F. The notice of decision, Planning Commission minutes, and other city records shall constitute the conditional use permit for conditional uses that were approved prior to the effective date of this ordinance.

**19.905.7 Review of Existing Conditional Use Permits**

A. The Planning Director may evaluate the operation of a conditional use for compliance with the conditional use permit if it appears the terms and conditions of the permit are being violated or complaints are received regarding the use. An observation or complaint must be based on one of the following occurrences:

1. Violation of any applicable development standard or requirement that pertains to the conditional use.
2. Failure to operate as approved or failure to satisfy a condition of approval from the original conditional use approval.
3. Incidents that are perceived to be a direct result of the conditional use and that may be detrimental to the health, safety, property, or general welfare of the public.

B. If the Planning Director finds that the conditional use is noncompliant or is having unanticipated impacts that are detrimental to the health, safety, property, or general welfare of the public, the Planning Director shall require the owner and/or operator to resolve the issue within a specified period of time.

C. If the owner and/or operator of the conditional use cannot or does not resolve the issue in Subsection 19.905.7.B, the matter shall be heard by the Planning Commission to review the conditional use permit and to consider modification, suspension, or revocation of the

conditional use permit. The review shall follow the procedures of Section 19.1006 Type III Review. The owner and/or operator shall not be charged a fee for this review.

The Planning Commission may take the following actions in consideration of the conditional use permit:

1. Allow the continued operation of the conditional use without modifications to the conditional use permit. This option should be utilized when the Planning Commission finds that the use is not out of conformance with the conditional use permit or that complaints raised under Subsection 19.905.7.A.3 are not detrimental to the health, safety, property, or general welfare of the public.
2. Suspend the permit and require the cessation of the conditional use until the issue is resolved. Upon suspension of the conditional use permit, the Planning Commission shall set a future meeting date to consider reinstating the permit. A suspended permit may be reinstated when, in the judgment of the Planning Commission, the issue has been resolved.
3. Modify the conditional use permit to address the circumstance(s) that gave rise to the issue. Modifications to the conditional use permit shall be based on factors relevant to the approval criteria for conditional uses in Subsection 19.905.4. The Planning Commission may opt to suspend the permit per Subsection 19.905.7.C.1 until compliance with the modified conditional use permit is achieved.
4. Revoke the conditional use permit. Revocation of a conditional use permit shall only occur in either of the following circumstances:
    a. The nature of the conditional use is such that its impacts cannot be minimized or mitigated to be consistent with the conditional use approval criteria.
    b. The property owner and/or operator of the conditional use failed to comply with the terms and/or conditions of the original or modified conditional use permit.

### 19.905.8 De Facto Conditional Use Status and Loss of Conditional Use Status

A. A legally established use currently identified in the code as a conditional use is a de facto conditional use, rather than a nonconforming use, even if:

1. It had previously been identified as a use that was allowed outright or a nonconforming use.
2. It had not previously undergone conditional use review.

A de facto conditional use does not require a conditional use permit. Modifications to a de facto conditional use shall be evaluated per Subsections 19.905.3 and 4.

B. A conditional use or de facto conditional use shall automatically lose its conditional use status if either of the following occurs. A dispute about whether either of these situations has occurred shall be resolved by the Planning Director through the Director determination process pursuant to Section 19.903.

1. The conditional use or de facto conditional use undergoes a change in use. A change in use to a use that is allowed outright, or a use approved through another discretionary review process, results in the loss of any conditional use status. A change in use to another approved conditional use results in the loss of the conditional use status only for the prior use.

2. The conditional use or de facto conditional use has been discontinued or abandoned as defined in Section 19.201 for more than 2 years. This discontinuation applies only to properties that both:
   a. Received conditional use approval or became de facto conditional uses on or after DATE, the effective date of Ordinance #_____.
   b. Are not residential conditional uses or residential de facto conditional uses.

**19.905.9 Standards Governing Conditional Uses**

A conditional use shall comply with the standards of the base zone, and any overlay zones, in which it is located, except as these standards have been modified by the Planning Commission when authorizing the conditional use and as otherwise modified by the standards in this subsection.

A. Yards

Additional yard width requirements may be imposed as a condition of approval to address impacts related to building height, mass, and proximity to residential land uses.

B. Access to Property and Building Openings

The City may limit or prohibit vehicle access from a conditional use to a residential street, and it may limit or prohibit building openings within 50 ft of residential property in a residential zone if the openings will cause glare or excessive noise or will otherwise adversely affect adjacent residential property.

C. Surface Mining

In considering a conditional use application for surface mining, the following minimum requirements shall apply:

1. Open pit and gravel excavating or processing shall not be permitted nearer than 50 ft to the boundary of an adjoining property line, unless written consent of the owner of such property is first obtained. Excavating or processing shall not be permitted closer than 30 ft to the right-of-way line of an existing or platted street or an existing public utility right-of-way.
2. Production from an open pit or the removal of sand and gravel shall not leave a slope exceeding 1 ft horizontal for 1 ft vertical.
3. An open pit or sand and gravel operation shall be enclosed by a fence suitable to prevent unauthorized access.
4. A rock crusher, washer, or sorter shall not be located nearer than 500 ft to a residential or commercial zone. Surface mining equipment and necessary access roads shall be constructed, maintained, and operated in such a manner as to eliminate, as far as is practicable, noise, vibration, or dust which is injurious or substantially annoying to persons living in the vicinity.

D. Junk or Wrecking Yard

In considering a conditional use application for a junk or wrecking yard, the Planning Commission shall require that it be enclosed by a sight-obscuring fence not less than 6 ft high.

E. High-Impact Commercial Use

1. In considering a conditional use application for a high-impact commercial use, the Planning Commission shall consider the following:
   a. Nearness to dwellings, churches, hospitals, parks, or other uses that require a quiet environment.
   b. Building entrances, lighting, exterior signs, and other features that could generate or be conducive to noise or other disturbance for adjoining uses.
   c. Parking vehicles and pedestrian access and circulation that could contribute to noise or attract habitual assembly of unruly persons.
   d. Hours of operation.
2. In addition to consideration of the above with respect to building and site design, the Planning Commission may attach conditions or standards of performance and impact, and methods for monitoring and evaluating these, to ensure that such establishments do not become unduly or unnecessarily disruptive.

F. Single-Family Attached Dwellings

In considering a conditional use application for single-family attached dwellings, the Planning Commission shall consider the following:

1. Whether a structure of a similar type is within 200 ft.
2. Relationship to neighboring uses.
3. Street access.
4. Terrain of the site.

G. Multifamily Condominium and Apartment Dwellings

In considering a conditional use application for multifamily condominium and apartment dwellings, the Planning Commission shall consider the following:

1. Relationship to neighboring uses.
2. Street access.
3. Terrain of the site.

H. Senior and Retirement Housing

In considering a conditional use application for senior and retirement housing, the Planning Commission shall consider the following:

1. Pedestrian access to transit.
2. Pedestrian access to convenience facilities such as grocery store, pharmacy, laundromat, park and open space, and senior activity center.
3. Pedestrian access to banking, churches, hospitals, and restaurants.
4. Quality of project as a living environment for residents.
5. Minimizing impact on the surrounding area.

The Planning Commission may recommend to the City Council an increase in density to as much as that permitted by the next higher zone. The City Council shall make the final decision on density increase.

An applicant shall submit materials and the Planning Commission shall attach conditions that will ensure that the special nature of the housing, and the groups to be served, are clearly defined and maintained in perpetuity. A project is required to meet the definition for this type of housing in Section 19.201.

## 19.906 DEVELOPMENT REVIEW

### 19.906.1 Purpose

The purpose of this section is to ensure compliance with the standards and provisions of the City's land use regulations through an efficient review process that effectively coordinates the City's land use and development permit review functions. Development review is intended to encourage quality development that is compatible with its surroundings and reflects the goals and policies of the Milwaukie Comprehensive Plan.

### 19.906.2 Applicability

A. Type I Review

The following development proposals must submit a development review application and are subject to the requirements of this section, unless explicitly stated otherwise in an applicable land use approval, waived by the Planning Director at the time of development permit submittal, or exempted per Subsection 19.906.2.C.

1. New development and expansions or modifications of existing development that require review against standards and criteria that are either clear and objective, or that require the application of limited professional judgment.
2. A change in primary use.
3. Parking lot expansions or modifications that change the number of parking spaces by 5 spaces or more.

B. Type II Review

The following development proposals must submit a development review application and are subject to the requirements of this section. Type II development review does not apply to development proposals in the downtown zones as these zones have a separate design review process.

1. New development, or expansions or modifications to existing development, for which the applicant elects, where a choice is available, to have the proposal reviewed against discretionary criteria or standards.
2. New construction of over 1,000 sq ft in the Manufacturing Zone within 120 ft of areas zoned for residential uses or within any part Business Industrial Zone.
3. New development or expansions, or modifications to existing development, where the scale of development and/or the level of discretion required to evaluate applicable standards and criteria is not appropriate for a Type I development review.

C. Exemptions

The following development proposals are not required to submit a development review application and are exempt from the requirements of this section. Proposals that are exempt from this section must still comply with all applicable development and design standards. For proposals that require a development permit, compliance with standards will be reviewed during the permit review process.

1. New or expanded single-family detached or attached residential dwellings.
2. Single-family residential accessory uses and structures.
3. Interior modifications to existing buildings that do not involve a change of use.

4. Construction of public facilities in the public right-of-way.
5. Temporary events as allowed in Chapter 11.04.

### 19.906.3 Review Process

A. General Provisions

1. Development review generally includes review of the proposed use(s), structure(s), and site improvements for compliance with applicable standards. For expansions or modifications of existing development, the review is limited to the modified portions of the site or structure and any other site improvements that may be affected by the proposed modifications.
2. Development proposals that are subject to Type II development review and require other land use approvals may submit a Type II development review application with the other required land use application(s) for concurrent review per Subsection 19.1001.6.B.
3. Development proposals that are subject to Type II development review and require development permits may submit a development permit application at any time; however, the City will not issue development permits until the Type II development review application has been approved.
4. Development proposals that are subject to Type I development review and require development permits may submit a Type I development review application with the required development permits for concurrent review. The City will not issue development permits until the Type I development review application has been approved.
5. Submittal of a Type II development review application may not preclude the need for submittal of a Type I development review application. Depending on the nature of the development proposal, Type II development review may be required during the land use review phase of the proposal, and Type I development review may be required during the development permit review phase of the proposal.

B. Review Types

1. Type I development review applications are evaluated through a Type I review per Section 19.1004. Type I development review ensures compliance with applicable land use and site development standards, and nondiscretionary design standards.
2. Type II development review applications are evaluated through a Type II review per Section 19.1005. Type II development review is for proposals that opt for or require discretionary review because they either do not meet clear and objective design standards or not all applicable design standards are clear and objective. The Planning Director will determine whether existing standards are clear and objective where they are not clearly identified as such.

### 19.906.4 Approval Criteria

The criteria in this subsection are the approval criteria for Type I and Type II development review applications. The criteria are based on a review of development standards throughout Title 19 Zoning. Not all of the standards within the chapters listed below are applicable to a proposal, and the City will identify the applicable standards through the development review process. Though the criteria are the same for Type I and Type II development review, the standards evaluated in a Type I review will be clear and objective or require limited professional judgment, while the Type II review will involve discretionary standards and/or criteria.

An application for Type I or Type II development review shall be approved when all of the following criteria have been met:

A. The proposal complies with all applicable base zone standards in Chapter 19.300.

B. The proposal complies with all applicable overlay zone standards in Chapter 19.400.

C. The proposal complies with all applicable supplementary development regulations in Chapter 19.500.

D. The proposal complies with all applicable off-street parking and loading standards and requirements in Chapter 19.600.

E. The proposal complies with all applicable public facility standards and requirements, including any required street improvements, in Chapter 19.700.

F. The proposal complies with all applicable conditions of any land use approvals for the proposal issued prior to or concurrent with the development review application.

## 19.907 DOWNTOWN DESIGN REVIEW

### 19.907.1 Purpose

Design review is intended to achieve the following purposes:

A. Preserve and enhance the character of downtown Milwaukie;

B. Ensure a degree of order, harmony, and quality in the downtown zones, providing buildings and projects that are attractive individually yet contribute to a downtown that is unified and distinctive as a whole; and

C. To ensure that new development and alterations or enlargement of existing development are consistent with the Downtown Design Guidelines and Downtown and Riverfront Land Use Framework Plan.

### 19.907.2 Applicability

All new construction and changes to buildings and/or properties in the downtown zones involving exterior maintenance and repair, minor exterior alterations, and major exterior alterations as defined in Subsection 19.310.6.B are subject to design review in accordance with the procedures as outlined below under Subsection 19.907.5

### 19.907.3 Design Guidelines

Design guidelines shall be established for the downtown zones and shall be considered as part of design review applications in accordance with the provisions of Section 19.310.

### 19.907.4 Duty to Review—Planning Director

The Planning Director shall review each application for a building permit or other approval in the downtown zones. The purpose of this review is to ensure that improvements within the downtown zones maintain consistent standards of design and to ensure that development is consistent with adopted design guidelines.

### 19.907.5 Application Procedure

Applications for design review shall be processed in accordance with Chapter 19.1000, Type I, Type II, and Type III procedures as indicated in this section, as follows:

A. Exterior maintenance and repair, as defined in Subsection 19.310.6.B.1, shall be processed as a Type I review in accordance with the procedures in Section 19.1004. Exterior painting, repair, and refurbishing of existing building materials that does not require a building permit shall be exempt from Type I review.

B. Minor exterior alterations, as defined in Subsection 19.310.6.B.2, shall be processed as a Type I review in accordance with the procedures in Section 19.1004. The Planning Director may change a Type I review to a Type II review upon finding the following:

   1. The work is visible from streets, courtyards, and/or public squares and significantly changes the architectural character of the building, which may include changes to exterior wall materials and changes in architectural style; and/or

   2. The work is inconsistent with the Downtown Design Guidelines.

C. A major exterior alteration, as defined in Subsection 19.310.6.B.3, shall be evaluated through a Type III review in accordance with the procedures in Section 19.1006. Applications for major exterior alterations shall be reviewed at a public hearing and decided by the Planning Commission, except as follows:

The following major exterior alterations shall be processed by Type II review:

1. Additions not more than 250 sq ft in floor area that do not face streets, courtyards, and/or public squares and are not designed and used for utility, HVAC, or other mechanical equipment, building upgrades as needed to comply with the Americans with Disabilities Act, or egress required by applicable fire safety or building codes.
2. Demolition or replacement of no more than 25% of the surface area of any exterior wall or roof that does not face streets, courtyard, and or public squares.

D. Residential

1. "Stand-alone" residential buildings that do not include nonresidential uses are exempt from design review, but shall be subject to the clear and objective design standards under Subsection 19.310.6. Applicants may elect to process a stand-alone residential building design review.
2. Mixed Use Buildings

   The residential portion of mixed use buildings shall be subject to the clear and objective standards under Subsection 19.310.6. The nonresidential portion of the building is subject to design review as provided in this section. Applicants may elect to process the entire mixed use building through design review.

   Any change in use of the residential portion of a mixed use building that elected only to apply clear and objective standards, and where exterior changes to the building are proposed shall require approval by the Planning Commission.

### 19.907.6 Application

Applications for design review shall be filed with the Planning Department on forms prescribed by the Planning Director. Design review applications shall include a narrative explaining how the development considered each of the Downtown Design Guidelines. The applicant shall demonstrate consistency with the design guidelines and compliance with applicable zoning criteria. In addition to all information specified on the "Submittal requirements" and "Site plan requirements" forms, each application for design review shall be accompanied by the following information:

A. Completed design review checklist.

B. Written statement that describes how the proposal meets applicable design guidelines. Where a guideline is not met, the applicant shall provide justification indicating why it is not applicable or demonstrate other site or project characteristics that warrant an exception.

C. Show footprints of surrounding buildings, including driveways and pedestrian connections.

D. Location, dimension, and setbacks of all proposed buildings, structures, walls, and fences.

E. Dimensioned building elevations indicating height, exterior materials, colors, and details of exterior architectural features, such as cornices, windows, and trim.

F. A streetscape drawing showing the relationship of the proposed project to adjacent buildings.

G. Frontage improvements in the public right-of-way per the Public Area Requirements.

### 19.907.7 Approval Criteria for Design Review

The approval authority may approve, approve with conditions, or deny design review based on the following approval criteria:

A. Compliance with Title 19;

B. Substantial consistency with the Downtown Design Guidelines; and

C. Submittal of a complete application and applicable fee as adopted by the City Council.

**19.907.8 Report and Recommendation by Design and Landmarks Committee**

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

**19.907.9 Variances to Development Standards**

The Planning Commission may authorize variances to the development standards under Subsection 19.310.4 in accordance with procedures of Section 19.911.

**19.907.10 Modification of Design Standards**

The Planning Commission may authorize modification of the design standards under Subsection 19.310.6.C, in accordance with the following procedures.

A modification to a design standard may be granted at a public hearing in accordance with Section 19.1006 when all of the following criteria are satisfied:

A. The modification is integral to the overall design concept for the building;

B. The modification:

   1. Substantially meets the intent of the design standard; or

   2. In combination with other design elements of the project, the modification meets the intent of the design standard; and

C. The project is substantially consistent with the Downtown Design Guidelines applicable to the design standard.

**19.907.11 Consideration of Prohibited Material or Design Features**

The Planning Commission may authorize the use of prohibited materials or design features specified in Subsection 19.310.6.C subject to the following criteria:

A. The applicant demonstrates that the prohibited material is substantially comparable to an allowed material with regards to quality, appearance, style, architectural effect, and durability.

B. Use of the prohibited materials is consistent with design considerations specified for the particular design element in the Milwaukie Downtown Design Guidelines.

## 19.908 EXTENSIONS TO EXPIRING APPROVALS

### 19.908.1 Purpose

The purpose of this section is to provide for an appropriate and efficient review process for extending the time period during which land use approvals are valid and may be utilized.

### 19.908.2 Applicability

A. Approvals Eligible for Extensions

An extension may be requested for any unexpired land use application that was required by Titles 14, 17, or 19 of the Milwaukie Municipal Code and that was approved through a Type I, II, or III review.

B. Approvals Not Eligible for Extensions

An extension pursuant to this section may not be requested for an approved land use application that has expired or where other sections of the municipal code specifically prohibit or limit the length or number of extensions allowed.

### 19.908.3 Review Process

A. General Provisions

1. An extension application must be submitted and approved prior to the expiration date of the approval. An extension application may not be submitted more than 6 months in advance of an expiration date.
2. An extension may be approved up to a maximum of 2 years from the effective date of the extension approval. Additional extensions may be requested. There is no limit to the number of extensions that may be requested or approved.
3. If the original application was approved through a Type III review, the Planning Director shall notify the Planning Commission of receipt of an extension application at the same time that public notice is mailed for the application.
4. If an extension application is denied, the applicant may seek approval for the proposed development by resubmitting all applicable land use applications. Such applications are subject to all procedures, approval criteria, and development standards in effect at the time of submission.

B. Review Types

1. If the original application was approved through a Type I review, the extension application shall be evaluated through a Type I review per Section 19.1004.
2. If the original application was approved through a Type II or Type III review, the extension application shall be evaluated through a Type II review per Section 19.1005 in order to provide public notice and opportunity for public comment.

### 19.908.4 Approval Criteria

An extension shall be approved when all of the following criteria have been met:

A. There have been no significant changes on the subject property, in the vicinity of the subject property, or to any relevant regulations since the original application was approved.

B. No modifications are proposed to the approved application or to the conditions of approval.

C. If the previously approved application included a transportation impact study or a water quality resource report, an updated report was provided with the extension application that shows no significant changes on the subject property or in the vicinity of the subject property. A letter from a recognized professional will also satisfy this criterion if it states that conditions have not changed since the original approval and that no new analysis is warranted.

## 19.909 MODIFICATIONS TO EXISTING APPROVALS

### 19.909.1 Purpose Statement

The purpose of this section is to provide an appropriate and efficient review process for modifying approved land use applications and development plans after approvals have been obtained but prior to issuance of development permits.

### 19.909.2 Applicability

A. Modifications Requiring Submittal of New Application

A modification application is required for any land use application that was approved pursuant to Titles 14, 17, or 19 of the Milwaukie Municipal Code through a Type I, II, or III review and that has been subsequently modified such that the proposal no longer substantially conforms to the plans and/or other development documents upon which the original proposal was evaluated and approved.

B. Exceptions

A modification application is not required when modifications are required by City staff during development review for compliance with conditions of approval, development standards, Public Works Standards, or any other applicable standards that the City has the authority to implement at the time of development.

### 19.909.3 Review Process

A. General Provisions

1. The Planning Director shall determine whether the modified proposal substantially conforms to the plans and/or other development documents upon which the original proposal was evaluated and approved. This determination is not a land use decision and is not subject to appeal.
2. If the Planning Director determines that a modified proposal no longer substantially conforms to the original approval, the Planning Director shall require one of the following before approving any development permits:
    a. Submittal and approval of a modification application to modify the original approval per this section.
    b. Withdrawal of the original land use application and resubmittal of the application with the proposed modifications.
3. For a modification requiring review under this section, the Planning Director shall determine whether the modification is major or minor in nature. This determination is not a land use decision and is not subject to appeal.
    a. Major modifications are modifications that alter a condition of approval imposed by the Planning Commission, have different or more impacts than the original proposal, and/or require substantial changes to the findings from the original approval.
    b. Minor modifications are all modifications not otherwise identified as major modifications.
4. The scope of review for a modification application reviewed under this section is limited to the modified portions of the development proposal and any other portions of the development proposal that are affected by the modification.

5. Denial of a modification application does not invalidate the original approval.

B. Review Types

1. Major or Minor Modification of Original Type I Approval

   Major and minor modifications shall be evaluated through a Type I review per Section 19.1004.

2. Major or Minor Modification of Original Type II Approval

   Minor modifications shall be evaluated through a Type I review per Section 19.1004. Major modifications shall be evaluated through a Type II review per Section 19.1005.

3. Major or Minor Modification of Original Type III Approval

   Minor modifications shall be evaluated through either a Type I or Type II review per Section 19.1004 or 19.1005. The Planning Director shall determine the review type after considering the nature and scope of the modification. The Planning Director's determination shall favor the review type that provides the most appropriate public notice and opportunity for public comment. This determination is not a land use decision and is not subject to appeal. Major modifications shall be evaluated through a Type III review per Section 19.1006.

### 19.909.4 Approval Criteria

A. Approval Criteria for Minor Modifications

1. The proposed modification complies with all applicable development standards and requirements, except as modified by the original approval.
2. The proposed modification will continue to meet all applicable approval criteria upon which the original approval was based.
3. The proposed modification, as either proposed or conditioned, will not negatively impact nearby uses, protected natural features, or public facilities any more than what was identified in the original approval.
4. The proposed modification does not alter or contravene any conditions of approval from the original approval.

B. Approval Criteria for Major Modifications

1. The proposed modification complies with all applicable development standards and requirements, except as modified by the original approval.
2. The proposed modification will continue to meet all applicable approval criteria upon which the original approval was based.

### 19.909.5 Conditions of Approval

The review authority may impose conditions of approval that are suitable and necessary to ensure that the proposed modification will not cause the approved development proposal to fail to meet any approval criteria upon which the original approval was based or negatively impact nearby uses, protected natural features, or public facilities.

## 19.910 RESIDENTIAL DWELLINGS

This section contains applications for types of residential dwellings that require land use approval.

### 19.910.1 Accessory Dwelling Units (Type 1)

Type 1 accessory dwelling unit is a permitted accessory use in all residential zones that allow single-family detached structures subject to the following:

A. Purpose

To provide the means for reasonable accommodation of accessory dwelling units, providing affordable and decent housing while providing homeowners with alternative financial resources, thereby encouraging maintenance of existing housing stock. It is the intent of this subsection that development of accessory dwelling units not diminish the single-family character of a neighborhood and that any single-family residence containing an accessory dwelling maintain the appearance of a single-family dwelling as viewed from the street. Any conversion or alteration of a single-family structure that requires exterior additions or modifications must be designed so that the outward appearance of the structure is consistent with general design characteristics of single-family structures and is consistent with the architectural treatment of the existing structure.

B. Approval Required

Type 1 accessory dwelling units are subject to Section 19.1005 Type II Review. Applications shall be made on forms provided by the Planning Department and shall be accompanied by the following information:

1. Completed application forms.
2. Site plan showing the following:
    a. Lot lines and location and dimensions of existing and proposed structures with yard dimensions.
    b. Location and dimension of existing and proposed parking.
    c. Location of structures on adjoining lots.
3. Dimensioned architectural drawings showing existing and proposed floor plans and elevations. Elevations are to identify existing and proposed details such as siding material, window and door design, roof style and height, and otherwise as necessary to demonstrate compliance with the requirements of this regulation. Floor plans are to identify existing and proposed layout with all spaces identified.

C. The applicant must demonstrate the proposed modifications comply with applicable building and fire safety codes.

D. Notwithstanding the maximum allowable net floor area of 600 sq ft, the accessory dwelling unit shall not exceed 40% of the gross floor area of the primary structure.

E. Construction of an accessory dwelling unit is subject to Milwaukie Municipal Code Chapter 13.28 Capital Improvements.

F. Ownership and Tenancy

Either the primary residence or the accessory unit must be occupied by the property owner. Proof of owner-occupancy shall be made annually in accordance with a procedure and submittal requirements established by the Planning Director. Ownership of the accessory

units shall not be subdivided or otherwise separated from ownership of the primary residence.

G. Business License Required

A Milwaukie business license is required for operation of rental property, pursuant to Milwaukie Municipal Code Chapter 5.08.

H. Use, Alteration, or Conversion of Structure

Type 1 accessory dwelling units may be located in a single-family residential structure provided the following criteria are met:

1. All exterior modifications shall be consistent with general design characteristics of single-family residential design. In reviewing applications for exterior modifications for consistency of architectural treatment with existing design, consideration shall be given to design elements such as, but not limited to, placement of doors and windows, finish materials, location of parking, lighting, and the like.
2. For fronting lots, only 1 entrance to the residential structure shall face the street. Exterior access to the accessory unit shall be located in side or rear yards or by means of the existing main entrance.
3. No portion of a building that encroaches within a required yard setback may be converted to or used as an accessory dwelling unit.
4. Exterior lighting for accessory unit doorways shall not encroach beyond the property line of the lot on which it is located.
5. No fire escape or exterior stair for access to an upper level may be located on the front of the building.
6. No more than 1 accessory dwelling unit per lot is permitted.

I. Required Parking

Off-street parking shall be provided in accordance with Chapter 19.600. If new parking must be constructed to meet minimum required parking, it shall be located contiguous to existing parking.

**19.910.2 Accessory Dwelling Units (Type 2)**

Type 2 accessory dwelling units are only allowed in the base zones where they are listed as conditional uses. Where allowed, they are subject to conditional use review and approval per Section 19.905. A Type 2 accessory dwelling unit may be allowed in conjunction with a detached single-family dwelling by conversion of existing space, or by means of an addition.

A. Requirements for conversion of existing space or addition:

1. The unit is in conformance with the site development requirements of the underlying zone;
2. Off-street parking shall be provided in accordance with Chapter 19.600;
3. Garage or carport space may not be converted to an accessory dwelling unit, unless parking standards can be met after the completion of the unit;
4. Public facilities must be adequate to serve both dwelling units, as determined by the Public Works Department;
5. One unit shall be occupied by the property owner;

6. The Planning Commission may impose conditions regarding modification of building height, landscaping, buffering and orientation of the accessory unit to protect privacy of the neighbors, and any other conditions deemed necessary to ensure compliance with the requirements of this subsection, except that no condition may be imposed that prohibits rental occupancy, separate access, and full kitchens in any accessory unit;
7. Conditions of approval shall be part of the deed restrictions;
8. No more than 1 additional unit is allowed.

B. Requirements for conversion of existing space.

1. Cannot exceed 50% of the existing structure;
2. Each unit shall be a minimum of 250 sq ft;
3. No fire escape or exterior stair for access to an upper level may be located on the front of a building.

C. Requirements for Addition

1. Does not exceed 1 bedroom;
2. The maximum area is 800 sq ft.

**19.910.3 Manufactured Dwelling Parks**

A. Purpose

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

B. Application

1. Manufactured dwelling park developments are only allowed in the R-3, R-5, and R-7 Zones. A site plan review is required prior to development of a manufactured dwelling park within these zones. The development must show conformance with all requirements of this subsection.
2. Each application for a manufactured dwelling park shall include a plot plan drawn to scale of the specific layout of the entire park. The plot plan shall include both the dimensions and the existing and proposed locations of all utilities, roadways, structures, parking, landscaping and open areas, and manufactured dwelling spaces on the site. In addition, the location of structures on adjacent properties shall be shown.

C. General Requirements

Manufactured dwelling parks shall be subject to review under Section 19.1006 Type III Review.

D. Development Requirements

All manufactured dwelling parks shall meet the following minimum requirements:

1. The minimum size of a manufactured dwelling park shall be 2 acres.
2. The number of units allowed in the manufactured dwelling park will be subject to the density requirements of the underlying zone after 15% of the site has been deducted for access drives.

3. A minimum setback of 15 ft will be observed between all manufactured dwellings and the outer boundary of the manufactured dwelling park. Exterior boundaries of the park shall be screened to a height of 6 ft by a sight-obscuring solid wall, fence, or evergreen or other suitable hedge planting, exclusive of required openings. It shall be the responsibility of the property owner to install and maintain required landscaping and irrigation systems.
4. Each manufactured dwelling unit or accessory structure shall maintain a minimum 10-ft setback from the private street and the nearest point of the unit or accessory structure. If the manufactured dwelling space is on the side of a private street bounded by a sidewalk, the unit or accessory structure shall be set back 10 ft from the sidewalk. Each unit or accessory structure shall be separated from any unit or accessory structure on an adjacent space by a minimum of 15 ft.
5. A minimum of 15% of the gross site area shall be reserved for common open space for the use of all residents. Open space requirements may include up to 100 sq ft per unit of indoor facilities. Outdoor open space areas should be suitably landscaped.
6. A manufactured dwelling park shall have an entrance drive from a public street. Access to individual units shall be from private streets within the site which have a minimum width of 24 ft of paving from curb to curb. A paved sidewalk shall be provided along at least 1 side of each private street in the park and shall be a minimum of 4 ft in width. Parking shall be permitted on 1 side of those private streets constructed with a minimum width of 30 ft of paving.
7. Off-street parking and recreational vehicle parking shall be provided as per Chapter 19.600. If 24-ft-wide streets are constructed, an additional off-street parking space per each 2 manufactured dwelling spaces shall be provided as visitor spaces. These parking spaces shall be within 100 ft of the manufactured dwellings they serve.
8. Except for a structure which conforms to the State definition of a manufactured dwelling accessory structure, no other extension shall be attached to a manufactured dwelling, except a garage or carport constructed to the specifications of the Oregon State Structural Specialty Code.
9. All manufactured dwellings shall be set onto an excavated area with perimeter foundation, and the excavated area shall be backfilled, or the dwelling must be installed with an approved foundation siding/skirting enclosing the entire perimeter of the dwelling. Foundation siding/skirting and backup framing shall be weather-resistant, noncombustible, or self-extinguishing materials which blend with the exterior siding of the dwelling. Below grade level and for a minimum distance of 6 in above finished grade, the materials shall be resistant to decay or oxidation. The siding shall be installed in accordance with manufacturer's recommendations or approved equal standards.
10. Requirements for lighting, utility systems, decks, play areas, park sanitation, and maintenance not specified herein shall be those specified in OAR 814-28 Mobile Home Parks and OAR 814-23 Mobile Homes, Manufactured Homes, Recreational Vehicles and Accessory Buildings or Structures.
11. Standards of the underlying zone also apply except where otherwise provided for in this subsection.
12. The entire manufactured dwelling park shall comply with the above requirements prior to occupancy.

### 19.910.4 Temporary Dwelling Units

A. Requirements for Approval

Upon application of the property owner, the Planning Director may approve the location of a temporary structure, such as a motor home, recreational vehicle, or trailer house, for use as a temporary residence during construction of a permanent dwelling for a period not to exceed 6 months where:

1. There is an emergency hardship resulting from a natural catastrophe such as fire, flood, storm, etc.
2. The applicant has applied for a building permit for a permanent dwelling.
3. The temporary structure will be owner-occupied.
4. The temporary structure must be removed upon completion of the permanent structure and prior to the issuance of the final certificate of occupancy.
5. The use is consistent with the Milwaukie Comprehensive Plan.
6. There is no other reasonable alternative to use of a temporary structure.

B. Approval Conditions

In addition, the applicant must satisfy the following conditions for approval:

1. City approval of a sewage disposal system for the structure.
2. Screening of the structure to minimize any adverse visual impact on surrounding property.
3. Placement of manufactured skirting around the structure.
4. Any other condition imposed by the Planning Director to safeguard the public health, safety, convenience, and general welfare.

C. Review Process

Applications for temporary structures shall be evaluated through a Type I review per Section 19.1004. Temporary permits that exceed the 6-month time period allowed under Subsection 19.910.4.A shall be evaluated through a Type III review per Section 19.1006.

## 19.911 VARIANCES

### 19.911.1 Purpose

Variances provide relief from specific code provisions that have the unintended effect of preventing reasonable development or imposing undue hardship. Variances are intended to provide some flexibility while ensuring that the intent of each development standard is met. Variances may be granted for the purpose of fostering reinvestment in existing buildings, allowing for creative infill development solutions, avoiding environmental impacts, and/or precluding an economic taking of property. Variances shall not be granted that would be detrimental to public health, safety, or welfare.

### 19.911.2 Applicability

A. Eligible Variances

Except for situations described in Subsection 19.911.2.B, a variance may be requested to any standard or regulation in Titles 17 or 19 of the Milwaukie Municipal Code, or any other portion of the Milwaukie Municipal Code that constitutes a land use regulation per ORS 197.015.

B. Ineligible Variances

A variance may not be requested for the following purposes:

1. To eliminate restrictions on uses or development that contain the word "prohibited."
2. To change a required review type.
3. To change or omit the steps of a procedure.
4. To change a definition.
5. To increase, or have the same effect as increasing, the maximum permitted density for a residential zone.
6. To justify or allow a Building Code violation.
7. To allow a use that is not allowed outright by the base zone. Requests of this nature may be allowed through the use exception provisions in Subsection 19.911.5, nonconforming use replacement provisions in Subsection 19.804.1.B.2, conditional use provisions in Section 19.905, or community service use provisions in Section 19.904.

C. Exceptions

A variance application is not required where other sections of the municipal code specifically provide for exceptions, adjustments, or modifications to standards either "by right" or as part of a specific land use application review process.

### 19.911.3 Review Process

A. General Provisions

1. Variance applications shall be evaluated through either a Type II or III review, depending on the nature and scope of the variance request and the discretion involved in the decision-making process.
2. Variance applications may be combined with, and reviewed concurrently with, other land use applications.

3. One variance application may include up to three variance requests. Each variance request must be addressed separately in the application. If all of the variance requests are Type II, the application will be processed through a Type II review. If one or more of the variance requests is Type III, the application will be processed through a Type III review. Additional variance requests must be made on a separate variance application.

B. Type II Variances

Type II variances allow for limited variations to numerical standards. The following types of variance requests shall be evaluated through a Type II review per Section 19.1005:

1. A variance of up to 40% to a side yard width standard.
2. A variance of up to 25% to a front, rear, or street side yard width standard. A front yard width may not be reduced to less than 15 ft through a Type II review.
3. A variance of up to 10% to lot coverage or minimum vegetation standards.
4. A variance of up to 10% to lot width or depth standards.
5. A variance of up to 10% to a lot frontage standard.

C. Type III Variances

Type III variances allow for larger or more complex variations to standards that require additional discretion and warrant a public hearing consistent with the Type III review process. Any variance request that is not specifically listed as a Type II variance per Subsection 19.911.3.B shall be evaluated through a Type III review per Section 19.1006.

**19.911.4 Approval Criteria**

A. Type II Variances

An application for a Type II variance shall be approved when all of the following criteria have been met:

1. The proposed variance, or cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.
2. The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.
3. Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.
4. Impacts from the proposed variance will be mitigated to the extent practicable.

B. Type III Variances

An application for a Type III variance shall be approved when all of the criteria in either Subsection 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

1. Discretionary Relief Criteria
   a. The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

b. The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:

(1) The proposed variance avoids or minimizes impacts to surrounding properties.

(2) The proposed variance has desirable public benefits.

(3) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

c. Impacts from the proposed variance will be mitigated to the extent practicable.

2. Economic Hardship Criteria

a. Due to unusual site characteristics and/or other physical conditions on or near the site, the variance is necessary to allow reasonable economic use of the property comparable with other properties in the same area and zoning district.

b. The proposed variance is the minimum variance necessary to allow for reasonable economic use of the property.

c. Impacts from the proposed variance will be mitigated to the extent practicable.

**19.911.5 Use Exceptions**

A. Applicability

A use exception is a type of variance intended to allow uses that are not allowed outright or conditionally by a property's base or overlay zones. Use exceptions shall not be granted to allow uses that are specifically prohibited by a property's base or overlay zones.

B. Review Process

A use exception shall be evaluated through a Type III review per Section 19.1006.

C. Approval Criteria

Economic hardship shall not be a primary basis for allowance of a use exception nor shall circumstances of which the applicant had prior knowledge be considered upon application. The Planning Commission may authorize exceptions to uses established by Title 19 upon a determination that all of the following criteria have been met:

1. Exceptional circumstances exist on or near the property over which the property owner has no control.

2. None of the allowed or conditionally allowed uses for which the property is zoned are practicable.

3. The proposed use will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.

4. Impacts from the proposed use will be mitigated to the extent practicable.

# CHAPTER 19.1000

# REVIEW PROCEDURES

**SECTIONS:**

**19.1001 General Provisions**
**19.1002 Preapplication Conference**
**19.1003 Application Submittal and Completeness Review**
**19.1004 Type I Review**
**19.1005 Type II Review**
**19.1006 Type III Review**
**19.1007 Type IV Review**
**19.1008 Type V Reviews**
**19.1009 Public Hearings**
**19.1010 Appeals**
**19.1011 Design Review Meetings**

## 19.1001 GENERAL PROVISIONS

### 19.1001.1 Purpose

The purpose of this chapter is to establish procedures for the review and processing of land use applications. This chapter is intended to make the land use review process clear and understandable, to facilitate timely review of land use applications by the City, and to enable the public to participate in the local land use decision-making process. The provisions contained in this chapter are intended to be consistent with Oregon law regulating land use review.

### 19.1001.2 Applicability

All land use applications shall be reviewed using the procedures contained in this chapter.

### 19.1001.3 Consistency with Statute

The processing of applications and permits authorized under Titles 14, 17, and 19 shall be consistent with the Oregon Revised Statutes (ORS). The City shall follow the provisions of the ORS in instances where following the provisions of this chapter alone would fail to meet State requirements for the processing or review of land use applications or permits.

### 19.1001.4 Review Types

All land use applications have both a review type and an application type. This chapter establishes the review procedures associated with each review type. Chapter 19.900 contains a list of application types and their associated review types.

A. Review Types

There are five types of review: Types I, II, III, IV, and V. Table 19.901 contains a list of the City's land use applications and their associated review types.

B. Determination

When a review type for a land use application is not specified in Table 19.901, or otherwise required by law, the Planning Director shall determine the review type. This determination is not applicable to the determination of whether a Comprehensive Plan map or Zoning Map amendment is a quasi-judicial or legislative matter, as described in Subsections 19.902.4

and 19.902.6. The Planning Director's determination shall favor the review type that provides the most appropriate public notice and opportunity for public comment. The Director's review type determination is not a land use decision per ORS 197.015 and is not subject to appeal.

C. Notice

The notice requirements in this chapter shall be the minimum amount of notice required for each specific review type. The City may provide notice in excess of the minimum requirement.

### 19.1001.5 Review and Appeal Authorities

A. The review authority for each review type is listed in Table 19.1001.5. The review authority is also the decision authority, except for Type IV and V reviews as described below.

B. The appeal authority for each review type is listed in Table 19.1001.5. The decision of the appeal authority is the City of Milwaukie's final decision for a permit, land use action, or zone change. Parties with standing may appeal the City's final decision to the Oregon Land Use Board of Appeals or other court.

**Table 19.1001.5**
**Land Use Application Review and City Appeal Authorities**

| Review Type | Review Authority | Appeal Authority |
|---|---|---|
| Type I | Planning Director | Planning Commission |
| Type II | Planning Director | Planning Commission |
| Type III | Planning Commission | City Council |
| Type IV | City Council, with initial hearing and recommendation by Planning Commission | None |
| Type V | City Council, with initial hearing and recommendation by Planning Commission | None |

### 19.1001.6 Applications

A. Initiation

Type I, II, III, and IV applications may be initiated by the property owner or contract purchaser of the subject property, any person authorized in writing to represent the property owner or contract purchaser, and any agency that has statutory rights of eminent domain for projects they have the authority to construct. Type III and IV applications involving map amendments may also be initiated by the Milwaukie City Council, Planning Commission, or Planning Director.

Type V applications may be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

B. Review of Multiple Applications

When multiple land use applications are required for a single proposal, the applicant may request, or the City may require, that the applications be processed concurrently or individually.

The City shall generally allow applicants the choice of having multiple applications for a single proposal processed concurrently or individually. The City may require that applications be reviewed concurrently for proposals where a review of an application(s) would be difficult without the context of the other applications related to the proposal.

Alternatively, the City may require parts of an application to be processed separately in order to comply with the 120-day decision requirement or to allow decisions on parts of a proposal to be made with a lower level of review.

1. Applications Processed Concurrently

   A concurrent application review consolidates the review of multiple applications into a single review process. The applications shall be processed according to the highest numbered review type required for any part of the application. For example, a concurrent review of a Type II review and a Type III review would be processed through a Type III review. A single decision shall be issued that includes findings for all of the applications that are part of the concurrent review.

   The applicant shall submit an application form and application fee for each application type being reviewed. The application shall contain the information and documentation required for each individual application type.

2. Applications Processed Individually

   Multiple applications related to a single proposal may be submitted individually at the same time or at different points in time. Each individual application, or group of concurrent applications, shall be processed according to their specified review type. Any concurrent applications shall be processed as specified in Subsection 19.1001.6.B.1. For each application or group of concurrent applications, the review authority will issue a separate decision.

   The applicant shall submit an application form and application fee for each application type being reviewed. The application shall contain the information and documentation required for each individual application type.

C. Notice Requirements

1. Sign Notice

   a. Notice of Type II, III, and IV applications, and some Type V applications, shall be posted on the subject property by the applicant per Sections 19.1005-19.1008 respectively.

   b. Signs shall be posted in a location which is clearly visible to vehicles traveling on a public street and legible to pedestrians walking by the property. If the sign is providing notice of a public hearing, the sign shall include the date, time, and place of the hearing. The number and size of signs shall be appropriate given the size of the property, the number of street frontages, and the functional classification of surrounding streets. The City shall provide the applicant at least 1 sign and instructions for posting. An affidavit of posting shall be submitted by the applicant prior to the issuance of the decision and made part of the case file.

   c. If the affidavit of posting is not submitted on time or if the required number and type of notice signs are not posted for the required period of time, the City may require an extension of the 120-day decision requirement, delay the decision, and/or postpone or continue the public hearing on the application as necessary. The applicant will be required to repost the notice signs as necessary to meet the requirements of Sections 19.1005-19.1008 respectively.

   d. The Planning Director shall adopt administrative rules for sign postings. The rules shall ensure that sign postings are consistent in appearance, legible to the public, and appropriate for the type and location of development being proposed. They

will also ensure that the applicant's affidavit contains all necessary information, including but not limited to photographic documentation, to confirm that the requirements of this subsection have been met.

2. Mailed Notice

Where a review type in this chapter specifies that mailed notice of an application or hearing is required, the notice is deemed to have been provided upon the date the notice is deposited in the mail. Failure of the addressee to receive such notice shall not invalidate the proceedings if it can be demonstrated by affidavit that notice to the required parties was deposited in the mail. Notice to surrounding property owners shall be provided using the most recent property ownership information from the County Assessor that is available to the City.

D. Additional Requirements

For applications where the subjective aspects of the height and mass of the proposed development will be evaluated at a public hearing, temporary on-site "story pole" installations that simulate the proposed development, and photographic representations thereof, may be required prior to the public hearing.

### 19.1001.7 Decisions

A. Conditions of Approval

The review authority shall impose conditions of approval on an application as necessary to ensure conformance with relevant approval criteria and development standards.

B. Applicable Standards and Criteria

Approval or denial of all ministerial or quasi-judicial applications, as defined by the ORS, shall be based upon the development standards and approval criteria that were in effect at the time the application was first submitted.

C. 120-Day Decision Requirement

The City shall take final action on land use actions subject to ORS 227.178, including resolution of all local appeals, within 120 days after the application has been deemed complete, unless the applicant provides a written statement consenting to an extension of the 120-day decision requirement. The total of all extensions, except as provided for mediation per ORS 227.178(11), shall not exceed 245 days.

D. Effective Date of Decisions

Decisions on land use applications become effective as described below.

1. The day after the appeal period expires, if no appeal is filed.
2. The day the decision is issued by the City's final appeal authority, if an appeal is filed.

E. Expiration of Approved Decisions

1. Type I, II, III, and IV land use approvals granted pursuant to this chapter for land use applications submitted on or after DATE, the effective date of Ordinance #_____, shall expire and become void unless the following criteria are satisfied:
   a. For proposals requiring any kind of development permit, the development must complete both of the following steps:

(1) Obtain and pay for all necessary development permits and start construction within 2 years of land use approval.

(2) Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval.

b. For proposals not requiring development permits, the development must utilize its approvals within 4 years of land use approval.

2. Land use approvals shall expire as outlined above unless one of the following occurs:

a. An extension is granted pursuant to Section 19.908.

b. The review authority specifies a different expiration date in the land use decision to accommodate large, complex, or phased development projects.

c. The expiration period for an approval is specified in another section of the municipal code.

3. The following land use approvals are exempt from expiration:

a. Amendments to Comprehensive Plan maps or text; amendments to Titles 14, 17, or 19; or any other amendment to a land use regulation per Section 19.902.

b. Code interpretations and Director determinations per Section 19.903.

c. Annexations per Chapter 19.1100.

F. Extensions to Expiring Approvals

The time period during which a land use approval is valid may be extended per Section 19.908.

G. Modifications to Existing Approvals

A valid land use approval may be modified per Section 19.909.

H. Appeals of Decisions

Land use decisions may be appealed per Section 19.1010. An appeal of a final decision by the City may be made by any party with standing to other courts.

## 19.1002 PREAPPLICATION CONFERENCE

### 19.1002.1 Purpose

The purpose of the preapplication conference is to acquaint the applicant or applicant's representative with the requirements of the municipal code in preparation for submission of a land use application, including relevant approval criteria, development standards, and procedures. The preapplication conference is not an exhaustive review of all potential issues or requirements. Furthermore, the information provided by the City is not binding, and it does not preclude the City from raising new issues or identifying additional requirements during the land use review process.

### 19.1002.2 Applicability

A. For Type I applications, a preapplication conference is optional.

B. For Type II, III, IV, and V applications, and expedited annexations per Section 19.1104, a preapplication conference is required, with the following exceptions:

1. The Planning Director may waive the preapplication conference requirement for proposals that are not complex or, for some other reason, would not benefit from a formal conference.
2. A preapplication conference is not required for City-initiated Type IV or V applications.

### 19.1002.3 Preapplication Conference Procedures

The Planning Director shall adopt administrative rules for how the City processes preapplication conferences. The rules shall ensure that preapplication conferences are held in a timely fashion and provide a thorough explanation of all required City permits, fees, and approvals for any given development proposal. They shall include standards for scheduling, conducting, and communicating the outcomes of preapplication conferences.

### 19.1002.4 Preapplication Conference Expiration

A. A preapplication conference is valid for 2 years. If a land use application or development permit has not been submitted within 2 years of the conference date, the applicant is required to schedule a new preapplication conference prior to submittal. This requirement may be waived per Subsection 19.1002.2.B.1.

B. An applicant may request additional preapplication conferences at any time. There is no limit to the number of preapplication conferences that may be requested.

C. If a development proposal is significantly modified after a preapplication conference occurs, the Planning Director may require a new preapplication conference. The City may refuse to accept a land use application or development permit for a significantly altered development proposal until a new preapplication conference is held.

## 19.1003 APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

### 19.1003.1 Application Forms and Checklists

A. The City shall supply land use application forms pursuant to the standards contained in the applicable State law, Comprehensive Plan, and implementing ordinance provisions.

B. The City shall supply checklists or information sheets that specify the information that must be contained in the application, including format and number of copies.

### 19.1003.2 Application Submittal Requirements

All application information must be sufficiently detailed and specific to the development being proposed to allow for adequate public review. The application submittal must include all of the items listed below for the City to accept the application and initiate completeness review. If the application requires a public hearing, additional items may be required per Subsections 19.1001.6.C and D prior to the public hearing.

A. Application form, including signature(s) of the property owner or public agency initiating the application.

B. Deed, title report, or other proof of ownership.

C. Detailed and comprehensive description of all existing and proposed uses and structures, including a summary of all information contained in any site plans. The description may need to include both a written and graphic component such as elevation drawings, 3-D models, and photo simulations, etc. For applications where the subjective aspects of the height and mass of the proposed development will be evaluated at a public hearing, temporary on-site "story pole" installations that simulate the proposed development, and photographic representations thereof, may be required at the time of application submittal.

D. Detailed statement that demonstrates how the proposal meets all applicable approval criteria, zoning and land use regulations, and development standards.

E. Site plan(s), preliminary plat, or final plat as applicable.

F. All materials identified on the Submittal Requirements form, including the signature(s) of the applicant submitting the materials.

G. Payment of all applicable land use application fee(s) and deposit(s), based on the fee schedule in effect on the date of application submittal.

H. Copy of a valid preapplication conference report if one was required per Subsection 19.1002.2.

**19.1003.3 Application Completeness Review**

All applications are subject to the provisions of Subsections 19.1003.3.A-D below. Type I, II, III, and IV applications are also subject to the provisions of Subsections 19.1003.3.E-G below.

A. The City shall review the application submittal within 30 days of receipt of the application and advise the applicant in writing as to whether the application is complete or incomplete.

B. The City may determine that an application is incomplete based on any of the following:

1. Failure to pay the required fees or deposits.
2. Failure to address the relevant approval criteria or development standards.
3. Failure to supply the materials identified on the Submittal Requirements form.

C. Incompleteness shall not be based on differences of opinion as to quality or accuracy.

D. Determination that an application is complete indicates only that the application contains the information necessary to review it for compliance against applicable development standards and approval criteria.

E. If an application is incomplete, the completeness notice shall identify the information that is missing. The applicant has 180 days from the date of first submittal to make the application complete.

F. An application will be deemed complete by the City upon submission of any of the following:

1. All of the missing information.
2. Some of the missing information and written notice from the applicant that no other information will be provided.
3. Written notice from the applicant that none of the missing information will be provided.

G. An application will be deemed void if it has been on file with the City for more than 180 days and the applicant has not made the application complete per Subsection 19.1003.3.F. The City will not refund application fees for voided applications. The applicant may resubmit a voided application to the City; however, it will be treated as a new application and will be subject to all current fees, development standards, approval criteria, and submittal requirements.

**19.1003.4 Resubmittal of Applications Following Denial**

A. If an application for a land use action has been denied, an application for the same or similar project on the same property may not be resubmitted unless one or more of the following occurs:

1. 2 years have passed since the denial became final.
2. Substantial changes are made to the application. Substantial changes to an application have occurred only if the changes resolve all findings for denial of the original application.
3. Standards and criteria relative to the findings of the original denial have changed and now support the application.
4. For Type IV or V decisions, there has been a substantial change in the composition of the City Council and the Council was the final decision-maker. A substantial change in the composition of the Council occurs if fewer than three Council members who voted to deny the original application remain on the Council.

B. For purposes of Subsection 19.1003.4, a land use approval is denied when the City's final decision of denial is not appealed or is upheld on appeal. An application that was denied solely on procedural grounds, or which was expressly denied without prejudice, is not subject to this subsection.

### 19.1003.5 Withdrawal of Applications Under Review

A. An application may be withdrawn by the applicant at any time prior to issuance of the final decision with the written consent of the property owner or contract purchaser.

B. If an application is withdrawn after the City has mailed the public notice, the City shall send another notice to all parties who received the original notice that the application has been withdrawn.

C. The City may refund application fees if staff has, in writing, recommended withdrawal and an application is withdrawn prior to being referred for comment. In all other cases, the City will not refund application fees for withdrawn applications.

### 19.1003.6 Modifications to Applications Under Review

The procedures of this subsection shall apply if an applicant modifies an application after the City has deemed it complete but prior to a public hearing or issuance of a decision.

A. Upon receipt of materials that modify an application, the Planning Director shall evaluate the modifications, determine which of the 3 categories listed below describes the modification, and follow the related procedures. This decision is not a land use decision and is not appealable.

1. Substantial Modification

   A substantially modified application greatly differs from the application that was deemed complete. Such differences may include the land use; size, height, and/or design of proposed structures; location of uses and structures on the site; or other such characteristics of the proposal. Substantial modifications may alter which approval criteria and development standards apply to the development proposal.

   The Planning Director shall notify the applicant of this determination and take one of the following actions, at the direction of the applicant:

   a. Allow the applicant to withdraw the original application and submit the modified proposal as a new application. The applicant shall submit all items required by Subsection 19.1003.2 for the new submittal.

b. Reject the modifications and continue processing the original application. Rejecting a substantial modification does not preclude the applicant from submitting significant or minor modifications.

2. Significant Modification

Significant modifications change an application so that one or more aspects of the modified proposal differ from the original proposal, while the overall proposal remains similar to the proposal that was deemed complete. Significant modifications typically should not alter which approval criteria and development standards apply to the development proposal.

The Planning Director shall notify the applicant of this determination and take one of the following actions, at the direction of the applicant:

a. Accept the modifications and proceed with the review of the modified application. The applicant shall pay the required fee for review of a modified application per the adopted fee schedule. The Planning Director may repeat any part of the public notice or referral process to provide appropriate opportunity for public review of the modifications. The applicant shall also extend the 120-day decision requirement in writing to a date that is sufficient to allow for additional review, public notice, or evaluation by the City.

b. Reject the modifications and continue processing the original application. Rejecting a significant modification does not preclude the applicant from submitting minor modifications.

3. Minor Modification

Minor modifications change an application so that a limited number of aspects differ from the original proposal and the differences are small relative to the original proposal. The magnitude of a minor modification should be small enough that another review of the proposal by other agencies or the public is not warranted.

The Planning Director shall notify the applicant of this determination and take one of the following actions, at the direction of the applicant:

a. Accept the modifications and proceed with the review of the modified application. The applicant shall extend the 120-day decision requirement in writing to a date that is sufficient to allow for additional review or evaluation by the City.

b. Reject the modifications and continue processing the original application.

B. In addition to the procedures of Subsection 19.1003.6.A, modifications received after the issuance of a staff report for a public hearing are subject to the following provisions:

1. If an applicant submits a substantial modification and chooses the option listed in Subsection 19.1003.6.A.1.a, the hearing shall be cancelled or suspended without the issuance of a decision by the review authority.

2. If an applicant submits a significant or minor modification and chooses the option listed in Subsection 19.1003.6.A.2.a or 3.a, the Planning Director may do any of the following:

a. If the hearing has been opened:

(1) Proceed with the hearing and allow a decision. The record may be left open at the request of any hearing participant to allow other parties a reasonable opportunity to respond.

(2) Continue the hearing to a future date to allow other parties a reasonable opportunity to respond.

b. If the hearing has not been opened:

(1) Open the hearing as scheduled and proceed per Subsection 19.1003.6.B.2.a.

(2) Reschedule the hearing to open at a later date.

### 19.1004 TYPE I REVIEW

Type I applications involve permitted uses or development governed by clear and objective approval criteria and/or development standards that may require the exercise of professional judgment about technical issues. Type I review provides for ministerial review of an application by the Planning Director and does not include public notice.

#### 19.1004.1 Preapplication Conference

A preapplication conference is not required for Type I applications.

#### 19.1004.2 Type I Application Requirements

A. Type I applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.

B. Type I applications are subject to completeness review per Subsection 19.1003.3.

#### 19.1004.3 Type I Public Notice

Public notice is not required for Type I applications.

#### 19.1004.4 Type I Review Authority

A. The review authority for all Type I applications shall be the Planning Director.

B. The Planning Director shall approve, approve with conditions, or deny an application based on applicable approval criteria and development standards.

#### 19.1004.5 Type I Decision

Written notice of the decision for Type I applications shall be provided to the applicant and property owner of record. The decision shall be issued with sufficient time to allow the appeal authority for a Type I application to issue a final decision within 120 days from when the application was deemed complete. The decision shall include the following information:

A. A brief summary of the proposal.

B. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.

C. A statement of the facts upon which the review authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.

D. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.

E. The date the decision shall become final, unless appealed. The decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.

F. A statement that the complete case file, including findings, conclusions, and conditions of approval, if any, is available for review. The decision shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

### 19.1004.6 Appeal of a Type I Decision

A Type I decision may be appealed by filing a written appeal within 15 days from the date that the notice of decision was mailed. The appeal authority for a Type I decision is the Planning Commission. Appeal requirements and procedures are outlined in Section 19.1010.

## 19.1005 TYPE II REVIEW

Type II applications involve uses or development governed by subjective approval criteria and/or development standards that may require the exercise of limited discretion. Type II review provides for administrative review of an application by the Planning Director and includes notice to nearby property owners to allow for public comment prior to the decision. The process does not include a public hearing.

### 19.1005.1 Preapplication Conference

A preapplication conference is required for all Type II applications per Section 19.1002. The Planning Director may waive this requirement.

### 19.1005.2 Type II Application Requirements

A. Type II applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.

B. Type II applications are subject to completeness review per Subsection 19.1003.3.

### 19.1005.3 Type II Public Notice

A. Referral

Within 7 days after the application has been deemed complete, the City shall 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. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

B. Mailed Notice

The purpose of the public notice is to provide nearby property owners and other interested parties with an opportunity to review the application and submit written comments concerning the application prior to issuance of the Type II decision. The goal of this notice is to invite relevant parties of interest to participate in the process.

1. Within 7 days after the application has been deemed complete, public notice of the application shall be mailed to the following parties:
   a. The applicant and/or the applicant's authorized representative.

b. The owner(s) of record of the subject property.

c. Owners of record of properties within 300 ft of the perimeter of the subject property.

d. Neighborhood district associations to which the application was referred.

2. The public notice shall include the following information:

a. The case file number and a brief summary of the proposal.

b. A brief description of the subject property, including street address, if available, map and tax lot number, and zoning designation.

c. A statement that the City will consider written comments submitted prior to the issuance of the decision, and that the decision may be issued as early as 14 days from the date of the public notice.

d. The place, date, and time that comments are due.

e. The applicable approval criteria and/or development standards against which the proposal will be evaluated.

f. A statement that all application materials and applicable approval criteria and development standards are available for review at the City, and that copies can be obtained at a reasonable cost.

g. The name and phone number of the City representative to contact for additional information.

h. The following statement: "Notice to mortgagee, lien holder, vendor or seller: The Milwaukie Municipal Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

C. Sign Notice

No more than 7 days after the application has been deemed complete, notice of the application shall be posted on the subject property by the applicant and shall remain continuously posted until the decision is issued. Sign notice shall meet the requirements of Subsection 19.1001.6.C.1.b.

**19.1005.4 Type II Review Authority**

A. The review authority for Type II applications shall be the Planning Director.

B. A decision will not be issued sooner than 14 days after mailing of the public notice and referral. Once issued, the decision is final and may only be reconsidered by appeal. Comments submitted within 14 days of the date of the public notice shall be considered. Comments submitted after 14 days from the date of the public notice and prior to the issuance of the decision may be considered.

C. The review authority shall approve, approve with conditions, or deny an application based on applicable approval criteria, development standards, and written comments received.

**19.1005.5 Type II Decision**

A. The decision shall be issued with sufficient time to allow the appeal authority for a Type II application to issue a final decision within 120 days from the date that the application was deemed complete.

B. Written notice of decision shall be mailed to the following parties. The date the notice is mailed shall be considered the date of the decision.

1. The applicant and/or the applicant's authorized representative.
2. The owner(s) of record of the subject property.
3. Any group or individual who submitted written comments during the comment period.
4. Any governmental agency that is entitled to notice by the municipal code or has requested notice of the decision.
5. Any group or individual who requested notice of the decision.

C. The notice of decision shall include the following information:

1. A description of the proposal with sufficient detail to explain the applicant's proposal.
2. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
3. A statement of the facts upon which the review authority relied to determine whether the application satisfied, or failed to satisfy, each applicable approval criterion.
4. The decision to approve or deny the application and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
5. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
6. A statement that any person who is adversely affected or aggrieved by the decision may appeal the decision by filing a written appeal within the 15-day appeal period.
7. A statement that the complete case file is available for review, including findings, conclusions, and conditions of approval, if any. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

### 19.1005.6 Appeal of a Type II Decision

A Type II decision may be appealed by filing a written appeal within 15 days from the date that the notice of decision was mailed. The appeal authority for a Type II decision is the Planning Commission. Appeal requirements and procedures are outlined in Section 19.1010.

## 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.

### 19.1006.1 Preapplication Conference

A preapplication conference is required for Type III applications per Section 19.1002.

### 19.1006.2 Type III Application Requirements

A. Type III applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.

B. Type III applications are subject to completeness review per Subsection 19.1003.3.

### 19.1006.3 Type III Public Notice

A. DLCD Notice

For Zoning Map amendments, the City shall provide notification to the Department of Land Conservation and Development at least 45 days prior to the first public hearing on adoption.

B. Metro Notice

For Zoning Map amendments, the City shall provide notification to Metro at least 45 days prior to the initial evidentiary hearing on adoption.

C. Referral

Within 7 days after the application has been deemed complete, the City shall 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. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

D. Mailed Notice

The purpose of the public notice is to provide nearby property owners and other interested parties with an opportunity to review the application, submit written comments, and participate in the proceedings concerning the Type III decision. The goal of this notice is to invite relevant parties of interest to participate in the process.

1. At least 20 days prior to the first public hearing on the application, public notice of the application shall be mailed to the parties listed below. Notice requirements specific to Zoning Map amendments are listed in Subsection 19.1006.3.D.3.
   a. The applicant and/or applicant's authorized representative.
   b. The owner(s) of record of the subject property.
   c. Owners of record of properties located within 300 ft of the perimeter of the subject property.
   d. Neighborhood district associations to which the application was referred.
2. The public notice shall include the following information:
   a. The case file number and a brief summary of the proposal.

b. A brief description of the subject property, including street address, if available, map and tax lot number, and zoning designation.

c. The date, time, and place of the hearing.

d. A statement that any member of the public may submit written comments prior to the hearing and may appear and provide written or oral testimony at the hearing.

e. A statement that only those who have submitted written comments prior to the hearing or participated at the hearing shall be entitled to appeal.

f. A general explanation of the requirements for submission of testimony and the procedure for conduct of public hearings.

g. A statement that a copy of the staff report will be available for review at no cost, and a copy will be provided at a reasonable cost, at least 7 days prior to the hearing.

h. The applicable approval criteria and/or development standards against which the proposal will be evaluated.

i. A statement that all application materials and applicable approval criteria and development standards are available for review at the City, and that copies can be obtained at a reasonable cost.

j. The name and phone number of the City representative to contact for additional information.

k. The following statement: "Notice to mortgagee, lien holder, vendor or seller: The Milwaukie Municipal Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

3. Notice requirements specific to Zoning Map amendments are as follows:

a. At least 20 days prior to the first public hearing on the application, public notice of an application that conforms to Subsection 19.1006.3.D.2 shall be mailed to the following parties:

(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 400 ft of the perimeter of the subject property.

(4) Neighborhood district associations to which the application was referred.

b. A Measure 56 notice that conforms to Subsection 19.1008.3.D shall be mailed at least 20 days, but not more than 40 days, prior to the first public hearing on the application to all owners of property affected by the proposal.

c. For applications that would change the zoning designation of a property that includes all or part of a mobile home or manufactured dwelling park, the City shall mail written notice to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days, but not more than 40 days, prior to the date of the first public hearing on the application. This notice shall conform to the requirements of Subsection 19.1008.3.D.

4. The City shall prepare an affidavit of mailing of notice for the file. The affidavit shall indicate the date that the public notice was mailed to the parties required by Subsection 19.1006.3.D.

E. Notice Sign

At least 14 days prior to the hearing, notice of the application shall be posted on the subject property by the applicant and shall remain continuously posted until the hearing. Sign notice shall meet the requirements of Subsection 19.1001.6.C.1.b

**19.1006.4 Type III Review Authority**

A. The review authority for Type III applications shall be the Planning Commission.

B. The review authority shall approve, approve with conditions, or deny an application subject to a Type III review after the public hearing.

**19.1006.5 Type III Decision**

A. The decision shall be issued with sufficient time to allow the appeal authority for a Type III application to issue a final decision within 120 days from the date that the application was deemed complete.

B. Written notice of decision shall be mailed to the following parties within 7 days of the date of the decision:

1. The applicant and/or the applicant's authorized representative.
2. The owner(s) of record of the subject property.
3. Any group or individual who submitted written comments at or prior to the public hearing.
4. Any group or individual who submitted oral testimony during the public hearing.
5. Any governmental agency which is entitled to receive notice per the municipal code or has requested notice of the decision.
6. Any group or individual who requested notice of the decision, including those who signed the attendance sheet at any public hearing on the application.

C. The notice of decision shall include the following information:

1. A description of the proposal with sufficient detail to explain the applicant's proposal.
2. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
3. A statement of the facts upon which the review authority relied to determine whether the application satisfied, or failed to satisfy, each applicable approval criterion.
4. The decision to approve or deny the application and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
5. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
6. A statement that only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal within the 15-day appeal period.

7. A statement that the complete case file is available for review, including findings, conclusions, and conditions of approval, if any. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

D. In addition to the requirements of Subsections 19.1006.5.A, B, and C, the following requirements apply to Zoning Map amendments evaluated through a Type III review process.

1. Following the close of the appeal period for a Zoning Map amendment for which no appeal was filed, the Planning Director shall prepare an ordinance to enact the approved Zoning Map amendment.

2. The ordinance shall be publicized per Milwaukie Charter, Chapter VIII, Section 31, Subsection (c). The ordinance shall be brought before Council at the first meeting following the close of the appeal period that meets the notice requirements of Milwaukie Charter, Chapter VIII, Section 31, Subsection (c).

3. The City Council shall enact the ordinance per the procedures of Milwaukie Charter, Chapter VIII, Section 31, Subsection (b), with the reading being by title only.

### 19.1006.6 Appeal of a Type III Decision

A Type III decision may be appealed by filing a written appeal within 15 days from the date that the notice of decision was mailed. Only the applicant or persons who submitted comments or made an appearance of record at the public hearing have standing to appeal a Type III decision. Appeal requirements and procedures are outlined in Section 19.1010.

## 19.1007 TYPE IV REVIEW

Type IV applications involve amendments to the City's zoning or land use maps. They are quasi-judicial in nature and require an initial hearing by the Planning Commission and a final decision by the City Council. They typically require a great detail of professional analysis, are reviewed against subjective approval criteria, and have a broader impact on the City's overall land use pattern than Type III Zoning Map amendments. The review process requires notice to nearby property owners and at least two public hearings.

### 19.1007.1 Preapplication Conference

A preapplication conference is required for Type IV applications per Section 19.1002.

### 19.1007.2 Type IV Application Requirements

A. Type IV applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.

B. Type IV applications are subject to completeness review per Subsection 19.1003.3.

### 19.1007.3 Type IV Public Notice

A. DLCD Notice

For Zoning Map or Comprehensive Plan map amendments, the City shall provide notification to the Department of Land Conservation and Development at least 45 days prior to the first public hearing on adoption.

B. Metro Notice

For Zoning Map or Comprehensive Plan map amendments, the City shall provide notification to Metro at least 45 days prior to the initial evidentiary hearing on adoption.

C. Referral

Within 7 days after the application has been deemed complete, the City shall 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. Affected City departments and any governmental agency that is entitled to notice by the municipal code.

D. Mailed Notice

The purpose of the public notice is to provide nearby property owners and other interested parties with an opportunity to review the application, submit written comments, and participate in the proceedings concerning the Type IV decision. The goal of this notice is to invite relevant parties of interest to participate in the process.

1. At least 20 days prior to a public hearing on the application, public notice of the application shall be mailed to the parties listed below. Notice requirements specific to Zoning Map amendments are listed in Subsection 19.1007.3.D.3.
   a. The applicant and/or applicant's authorized representative.
   b. The owner(s) of record of the subject property.
   c. Owners of record of properties located within 400 ft of the perimeter of the subject property.
   d. Neighborhood district associations to which the application was referred.
2. The public notice shall include the following information:
   a. The case file number and a brief summary of the proposal.
   b. A brief description of the subject property, including street address, if available, map and tax lot number, and zoning designation.
   c. The date, time, and place of the hearing.
   d. A statement that any member of the public may submit written comments prior to the hearing and may appear and provide written or oral testimony at the hearing.
   e. A statement that only those who have submitted written comments prior to the hearing or participated at the hearing shall be entitled to appeal.
   f. A general explanation of the requirements for submission of testimony and the procedure for conduct of public hearings.
   g. A statement that a copy of the staff report will be available for review at no cost, and a copy will be provided at a reasonable cost, at least 7 days prior to the hearing.
   h. The applicable approval criteria and/or development standards against which the proposal will be evaluated.

i. A statement that all application materials and applicable approval criteria and development standards are available for review at the City, and that copies can be obtained at a reasonable cost.

j. The name and phone number of the City representative to contact for additional information.

k. The following statement: "Notice to mortgagee, lien holder, vendor or seller: The Milwaukie Municipal Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

3. Notice requirements specific to Zoning Map amendments are as follows:

a. A Measure 56 notice that conforms to Subsection 19.1008.3.D shall be mailed at least 20 days, but not more than 40 days, prior to the first public hearing on the application to all owners of property affected by the proposal.

b. For applications that would change the zoning designation of a property that includes all or part of a mobile home or manufactured dwelling park, the City shall mail written notice to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days, but not more than 40 days, prior to the date of the first public hearing on the application. This notice shall conform to the requirements of Subsection 19.1008.3.D.

4. The City shall prepare an affidavit of mailing of notice for the file. The affidavit shall indicate the date that the public notice was mailed to the parties required by Subsection 19.1007.3.D.

E. Sign Notice

At least 14 days prior to the hearing, notice of the application shall be posted on the subject property by the applicant and shall remain continuously posted until the hearing. Sign notice shall meet the requirements of Subsection 19.1001.6.C.1.b.

**19.1007.4 Type IV Review Authority**

A. The review authority for Type IV applications shall be the City Council.

B. The review authority shall approve, approve with conditions, or deny an application subject to a Type IV review after the public hearing.

**19.1007.5 Type IV Decision**

A. The Planning Commission shall serve as the recommendation authority for Type IV applications.

B. The Planning Commission shall conduct an initial evidentiary hearing and provide a recommendation to the City Council with sufficient time to allow the City Council to issue a final decision within 120 days from the date that the application was deemed complete.

C. The Planning Commission may recommend that the City Council approve or deny the application with or without changes. The Planning Commission shall provide a written justification for the recommendation.

D. The City shall provide notice of the hearing before the City Council consistent with the public notice requirements in Subsections 19.1007.3.D and E, except that a second notice per Subsection 19.1007.3.D.3 is not required.

E. At the conclusion of the first public hearing before City Council, the City Council shall take one of the following actions:

1. Continue the matter to a date, time, and place certain.
2. Approve the application, with or without changes. City staff, with review from the City Attorney, shall prepare written findings that demonstrate how the application meets all applicable approval criteria.
3. Deny the application. City staff, with review from the City Attorney, shall prepare written findings that demonstrate how the application fails to meet any applicable approval criteria.

F. Written notice of decision shall be mailed to the following parties within 7 days of the date of the decision:

1. The applicant and/or the applicant's authorized representative.
2. The owner(s) of record of the subject property.
3. Any group or individual who submitted written comments at or prior to any public hearing.
4. Any group or individual who submitted oral testimony during any public hearing.
5. Any governmental agency which is entitled to receive notice per the municipal code or has requested notice of the decision.
6. Any group or individual who requested notice of the decision, including those who signed the attendance sheet at any public hearing on the application.

G. The notice of decision shall include the following:

1. A description of the proposal with sufficient detail to explain the applicant's proposal.
2. A description of the subject property reasonably sufficient to inform the reader of its location, including street address, if available, map and tax lot number, and zoning designation.
3. A statement of the facts upon which the review authority relied to determine whether the application satisfied, or failed to satisfy, each applicable approval criterion.
4. The decision to approve or deny the application and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.
5. The date the decision shall become final, unless appealed. The notice of decision shall state in boldface type the date and time by which an appeal must be filed. The statement shall reference the requirements for filing an appeal of the decision.
6. A statement that only persons who submitted comments or made an appearance of record at a public hearing on the application have standing to appeal the decision by filing a written appeal within the 15-day appeal period.
7. A statement that the complete case file is available for review, including findings, conclusions, and conditions of approval, if any. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.
8. A summary of the requirements for appealing the decision to the Land Use Board of Appeals.

### 19.1007.6 Appeal of a Type IV Decision

The City Council decision on a Type IV application is the City's final decision. A Type IV decision may be appealed to the Land Use Board of Appeals consistent with ORS 197 and OAR 661, as may be amended. Only the applicant or persons who submitted comments or made an appearance of record at a public hearing on the application have standing to appeal a Type IV decision.

## 19.1008 TYPE V REVIEW

Type V applications are legislative in nature and involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and Comprehensive Plan amendments that apply to more than just one property). Type V review applications are evaluated by the Planning Commission at an initial evidentiary hearing and then forwarded to the City Council for a decision at a public hearing. The review process requires broader public notice than other types of applications and at least two public hearings.

The City Council, Planning Commission, Planning Director, or any individual may initiate a Type V application to amend the Milwaukie Comprehensive Plan or Zoning Ordinance.

### 19.1008.1 Preapplication Conference

A preapplication conference is required for Type V applications that are initiated by any individual or party other than the City.

### 19.1008.2 Type V Application Requirements

A. Type V applications shall be made on forms provided by the Planning Director and shall include all of the information required by Subsection 19.1003.2.

B. Type V applications are subject to completeness review per Subsection 19.1003.3.

### 19.1008.3 Type V Public Notice

A. General Public Notice

The purpose of general public notice for Type V applications is to allow the public, organizations, and other governmental agencies a meaningful opportunity to review and comment on legislative proposals.

1. The Planning Director shall provide opportunities for public review and input on legislative proposals at an early stage in the adoption process. This may include the referral process for Type III or IV applications; open houses; discussions with neighborhood district associations; work sessions with the City Council, Planning Commission, and other City boards and commissions; and/or direct communication with parties that may be affected by the proposal. This subsection is not prescriptive with regard to the timing or manner of public notice.

2. At least 30 days prior to a public hearing on a Type V application, the City shall provide notice of the hearing. At a minimum, the notice shall be available on the City web site and at City facilities that are open to the public and that customarily display public information. At a minimum, the notice shall include:

   a. The date, time, and place of the hearing.

   b. The case file number and summary of the proposal.

   c. A map showing the properties that will be impacted by the proposal if applicable.

3. Individual property owners shall be notified if the proposal involves a discrete geographic area or specific properties in the City. The Planning Director shall decide when individual property owner notification is warranted. The content of the notice shall be as described in Subsection 19.1008.3.A.2. The notice parties and timeline shall be as described in Subsections 19.1006.3.D.3.a and signage shall be provided as described in 19.1006.3.E.

B. DLCD notice

Notice of a Type V application shall be mailed to the Department of Land Conservation and Development at least 45 days prior to the initial evidentiary hearing on adoption.

C. Metro Notice

Notice of a Type V application shall be mailed to Metro at least 45 days prior to the initial evidentiary hearing on adoption.

D. Property Owner Notice (Measure 56)

At least 20 days but not more than 40 days before the initial evidentiary hearing on a Type V application, the City shall mail notice to owners of property within the City for which the proposed ordinance, if adopted, may, in the Planning Director's opinion, affect the permissible uses of land for those property owners. The notice shall, at a minimum, include the following information:

1. A statement in bold type across the top of the first page of the notice that reads substantially as follows: "This is to notify you that the City of Milwaukie has proposed a land use regulation that may affect the permissible uses of your property or other properties."
2. The case file number and/or ordinance number.
3. A brief summary of the proposal, including how it may, if adopted, affect the permissible uses and value of property in the City.
4. The date, time, and place of the hearing.
5. A statement that a copy of the proposal is available for review at the City at no cost and that a copy can be obtained at a reasonable cost.
6. The name and phone number of the City representative to contact for additional information.
7. If applicable, a statement that the proposal is a result of an order of the Land Conservation and Development Commission.

E. The City shall prepare an affidavit of mailing of notice for the file. The affidavit shall indicate the date that the required property owner notice was mailed to the parties required by Subsection 19.1008.3.D.

**19.1008.4 Type V Decision Authority**

A. The review authority for Type V applications shall be the City Council

B. The review authority may approve, approve with conditions, amend, deny, or take no action on an application subject to a Type V review after the public hearing.

**19.1008.5 Type V Recommendation and Decision**

A. The following procedures apply to applications evaluated through a Type V review.

1. The Planning Commission shall serve as the recommendation authority for Type V applications.
2. The Planning Commission shall conduct an initial evidentiary hearing and provide a recommendation to the City Council within 180 days from the date that the application was deemed complete.
3. The Planning Commission may recommend that the City Council approve or deny the application with or without changes. The Planning Commission shall provide a written justification for the recommendation.
4. The City shall provide notice of the hearing before the City Council consistent with the public notice requirements in Subsection 19.1008.3.A.
5. At the conclusion of the first public hearing before City Council, the City Council shall take one of the following actions:
   a. Continue the matter to a date, time, and place certain.
   b. Remand the matter back to the recommendation authority for additional deliberation.
   c. Approve the proposal, with or without changes. City staff, with review from the City Attorney, shall prepare the ordinance with written findings that demonstrate how the proposal meets all applicable approval criteria.
   d. Deny the proposal.
   e. Take no action on the proposal.
6. Not more than 5 days after the date of the approval or denial of the proposal, the City shall provide the required notice to the Department of Land Conservation and Development.
7. Within 7 days after the date of the approval or denial of the proposal, the City shall mail, or otherwise provide, notice to persons who testified orally or in writing to the recommendation or review authority while the public record was open regarding the proposal. The notice shall include the following information:
   a. A brief summary of the decision.
   b. If adopted:
      (1) The date and number of the adopting ordinance.
      (2) Where and when the adopting ordinance and related findings may be reviewed.
   c. A summary of the requirements for appealing the decision to the Land Use Board of Appeals.

**19.1008.6 Appeal of a Type V Decision**

The City Council decision on a Type V application is the City's final decision. A Type V decision may be appealed to the Land Use Board of Appeals consistent with ORS 197 and OAR 661, as may be amended. Only the applicant or persons who submitted comments or made an appearance of record at a public hearing on the application have standing to appeal a Type V decision.

## 19.1009 PUBLIC HEARINGS

### 19.1009.1 Responsibility of City for Public Hearings

The City shall:

A. Schedule land use applications for review and public hearing before the appropriate review authority as required per Table 19.1001.5.

B. Provide public notice of the public hearing consistent with the requirements in this chapter.

C. Prepare minutes for the public hearing that include the decision on the matter and the reasons for the decision.

D. Provide a copy of the notice of decision to all parties, consistent with the requirements in this chapter.

### 19.1009.2 General Public Notice Requirements

A. Notice of public hearings shall be provided as described in Sections 19.1006, 19.1007, 19.1008, and 19.1010.

B. All public notices shall be deemed to have been provided or received upon the date they were deposited in the mail or personally delivered, whichever occurs first.

### 19.1009.3 Rules of Procedure

A. Public hearings shall be conducted in accordance with the bylaws and rules of procedure adopted for the hearing body by City Council. Additionally, the provisions in Subsections 19.1009.4-13 below apply to all public hearings.

B. At the commencement of a hearing, a statement shall be made to those in attendance that:

1. Lists the applicable approval criteria.
2. States that testimony and evidence must be directed toward the applicable approval criteria or other criteria in the Zoning Ordinance or Comprehensive Plan that the person testifying believes is applicable to the proposal.
3. States that failure to raise an issue accompanied by testimony or evidence sufficient to afford the review authority an opportunity to respond to the issue precludes an appeal of the decision.

### 19.1009.4 Challenges to Impartiality

A. Except for Type V hearings, any hearing participant or a member of the hearing body may challenge the qualifications of a member of the hearing body to participate in the hearing and decision on the proposal. The challenge shall state the facts relied upon by the challenger relating to a person's bias, prejudgment, personal interest, ex parte contact or other facts from which the challenger has concluded that the member of the hearing body 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 hearing.

C. The hearing body shall deliberate and vote to decide whether or not the challenged person may remain a member of the hearing body for the decision on which their impartiality was challenged. The person who is the subject of the challenge may not vote on the motion.

### 19.1009.5 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.

### 19.1009.6 Ex Parte Contacts

Except for Type V hearings, the general public has a right to have the hearing body members unbiased by prehearing or ex parte contacts on proposals heard by them. This must be balanced with the public's right to access public officials on any matter. Therefore, hearing body members shall reveal any relevant prehearing or ex parte contacts at the commencement of the public hearing on the proposal. 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 public hearing on the proposal.

### 19.1009.7 Disqualification

Except for Type V hearings, disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of a hearing body present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

### 19.1009.8 Rights of Abstaining or Disqualified Member of the Hearing Body

A. An abstaining or disqualified member of the hearing body shall be counted for purposes of forming a quorum. A member who represents a personal interest at a hearing may do so only by making full disclosure to the hearing body, abstaining from voting on the proposal, vacating the seat on the hearing body, and physically joining the audience. A member representing a personal interest at a hearing shall not be counted for purposes of forming a quorum.

B. If all members of a hearing body abstain or are disqualified, all members present after stating their reasons for abstention or disqualification shall be requalified and shall proceed with the hearing.

### 19.1009.9 Absence of a Member of the Hearing Body

Except for Type V hearings, a member absent during the presentation of evidence or testimony in a hearing may not participate in the deliberations or decision unless the member has reviewed all the evidence or testimony received.

### 19.1009.10 Burden and Nature of Proof

Except for Type V applications, the applicant shall bear the burden of proof and persuasion that the proposal complies with applicable provisions of the municipal code. 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 development standards and approval criteria.

### 19.1009.11 Continuance of Hearing

A. Receipt of Additional Materials

All evidence, testimony, or documents relied upon by the applicant shall be submitted to the City and made available to the public. If additional evidence, testimony, or documents is provided by any hearing participant, the hearing body may allow a continuance or leave the

record open for at least 7 days to allow other parties a reasonable opportunity to respond. The hearing body may ask the applicant to consider granting an extension of the 120-day decision requirement if a delay in proceedings could impact the ability of the City to take final action on the application, including resolution of any local appeals.

B. Request to Submit Additional Evidence or Testimony

Prior to closing the initial evidentiary hearing, any hearing participant may request an opportunity to present additional evidence or testimony regarding the application. The hearing body shall grant such request by continuing the public hearing or leaving the record open for additional written evidence or testimony pursuant to Subsection 19.1009.11.C below.

C. Granting of Continuance

If the hearing body grants a continuance, the hearing shall be continued to a date, time, and place certain, at least 7 days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new evidence or testimony is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open to submit additional written evidence or testimony for the purpose of responding to the new written evidence or testimony.

D. Leaving the Record Open

If the hearing body leaves the record open for additional written evidence or testimony, the record shall be left open for at least 7 days. Any participant may file a written request with the hearing body for an opportunity to respond to new evidence or testimony submitted during the period the record was left open. If such a request is filed, the hearing body shall reopen the record and any person may raise new issues which relate to the new evidence, testimony, or criteria for decision-making.

E. 120-Day Decision Requirement

Except for Type V applications, a continuance or extension granted pursuant to Subsection 19.1009.11 shall be subject to the limitations of the 120-day decision requirement unless the continuance or extension is requested or agreed to in writing by the applicant.

F. Final Arguments by Applicant

Unless waived by the applicant, the hearing body shall allow the applicant at least 7 days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final arguments shall be considered part of the record, but shall not include any new evidence. For purposes of Subsection 19.1009.11.F, "argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policies believed relevant by the applicant. "Argument" does not include facts. "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the applicant to be relevant to the decision.

**19.1009.12 Decision**

A. Following the close of the public portion of the hearing, the hearing body shall approve, conditionally approve, or deny the application. If the hearing is an appeal, the hearing body shall affirm, reverse, or remand the decision that is on appeal.

B. A final local decision on a Type I, II, III, or IV land use application shall be made within 120 days from the date the application was deemed complete, except that, with the agreement

of the hearing body and the applicant or appellant, the processing of a matter under consideration may be extended per Subsection 19.1001.7.C.

C. Notice of decision shall be provided consistent with the requirements established for Type III, IV, and V applications and appeals in this chapter.

D. The hearing body shall prepare written findings for the decision. The findings shall include:

1. A statement of the applicable approval criteria against which the application was evaluated.
2. A statement of the facts that the hearing body relied upon to determine whether the application satisfied, or failed to satisfy, each applicable approval criterion and development standard.
3. The decision to approve, conditionally approve, or deny an application and the reasons for that decision.

### 19.1009.13 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 hearing body.

## 19.1010 APPEALS

A decision on the approval of a Type I, II, or III application may be appealed by filing a written appeal with the City within 15 days of the date on the notice of decision. If the 15th day falls upon a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next day which is not a weekend or legal holiday. Table 19.1001.5 identifies the review authority and appeal authority for each review type.

### 19.1010.1 Filing an Appeal

A. An appeal application shall contain the following information:

1. Date and case file number of the decision being appealed.
2. Documentation that the person filing the application has standing to appeal per Subsections 19.1010.4.A, 5.A, and 6.A.
3. Detailed statement describing the basis of the appeal.
    a. For appeal of a Type I or III decision, the statement must identify which approval criterion or development standard is believed to have been overlooked or incorrectly interpreted or applied and/or which aspect of the proposal is believed to have been overlooked or incorrectly evaluated.
    b. For appeal of a Type II decision, the statement must identify either an error described in Subsection 19.1010.1.A.3.a or the manner in which the person filing the appeal was adversely impacted or aggrieved by the decision.

B. The appeal application fee shall be paid at the time of filing.

C. If the appeal application and applicable fee are not submitted within the 15-day appeal period, or if the appeal application does not contain the required items specified in Subsections 19.1010.1.A.1-3 above, the application shall not be accepted by the City. A decision by the City to not accept an appeal within the specified appeal period shall be final.

### 19.1010.2 General Procedures Applicable to All Appeals

Appeal hearings before the appropriate appeal authority, as specified in Table 19.1001.5, shall be conducted in accordance with the public hearing provisions in Section 19.1009.

### 19.1010.3 Types of Appeal Hearings

The City has two types of hearings used for appeals of land use decisions. The general procedures for these hearings are as follows.

A. Unrestricted De Novo Hearing

An unrestricted de novo hearing allows for the presentation of new evidence, testimony, and argument by any party. The appeal authority shall consider all relevant evidence, testimony, and argument that are provided at the hearing by the appellant or any party. The scope of the hearing shall not be limited to the issues that were raised on appeal. The standard of review for an unrestricted de novo hearing is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law.

B. On the Record De Novo Hearing

An on the record de novo hearing does not allow for the presentation of new evidence by any party. New testimony is allowed. New arguments are allowed based on evidence already in the record and testimony that is new or already in the record. The scope of the hearing is not limited to the issues that were raised on appeal. The standard of review for an on the record de novo hearing is a new evaluation of existing evidence, new and existing testimony, and new and existing arguments.

### 19.1010.4 Specific Provisions for Appeal of a Type I Decision

A. A Type I decision may only be appealed by the applicant or the applicant's representative.

B. The City shall mail written notice of the appeal hearing to the applicant or the applicant's representative at least 20 days prior to the appeal hearing.

C. The appeal hearing shall be an unrestricted de novo hearing.

D. The decision of the designated appeal authority for appeals of Type I decisions shall be the final local decision.

### 19.1010.5 Specific Provisions for Appeal of a Type II Decision

A. A Type II decision may be appealed by the applicant, the applicant's representative, or any other person or organization who is adversely affected or aggrieved by the decision.

B. The City shall mail written notice of the appeal hearing to all parties who were entitled to Type II public notice per Subsection 19.1005.3.B.1 at least 20 days prior to the appeal hearing.

C. The appeal hearing shall be an unrestricted de novo hearing.

D. The decision of the designated appeal authority for appeals of Type II decisions shall be the final local decision.

### 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. The City shall mail written notice of the appeal hearing to all parties who were entitled to Type III public notice per Subsection 19.1006.3.D at least 20 days prior to the appeal hearing.

C. The appeal hearing shall be an on the record de novo hearing.

D. The record shall include:

1. A factual report prepared by the Planning Director.
2. All exhibits, materials, pleadings, memoranda, stipulations, and motions submitted by any party and reviewed or considered in reaching the decision under appeal.
3. The minutes from the original hearing and a detailed summary of the evidence and testimony.

E. The decision of the designated appeal authority for appeals of Type III decisions shall be the final local decision.

#### 19.1010.7 Remand from the Land Use Board of Appeals

City of Milwaukie decisions remanded by the Land Use Board of Appeals shall be heard by the appeal authority following the procedures of Section 19.1009 and shall be decided within 90 days from the date of the remand.

### 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.

#### 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, one of the following shall occur:

1. The applicant may extend the 120-day decision requirement 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, 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 19.907.8.

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.

### 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 public notice shall meet the requirements of Subsections 19.1006.3.D and E.

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.

### 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 19.907.8.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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 per Subsection 19.1001.7.C.

B. Design review meeting continuance proceedings shall be per Subsection 19.1009.11.

### 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.

**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.

# CHAPTER 19.1100

# ANNEXATIONS AND BOUNDARY CHANGES

**SECTIONS:**

**19.1101 Purpose**
**19.1102 Annexations**
**19.1103 Other Boundary Changes**
**19.1104 Expedited Process**
**19.1105 Appeals**

## 19.1101 PURPOSE

The purpose of this chapter is to carry out the provisions of ORS 268.354 and Metro Code Chapter 3.09. This chapter provides standards and procedures for all boundary change proposals, including annexation proposals. For the purpose of this chapter, the term "boundary change" includes the formation, merger, consolidation, or dissolution of a city or district; annexation or withdrawal of territory to or from a city or district or from a city-county to a city; or an extraterritorial extension of water or sewer service by a City or district.

## 19.1102 ANNEXATIONS

### 19.1102.1 Administration and Approval Process

A. Annexation petitions shall include a request for Comprehensive Plan and zoning designations, and shall be reviewed by the Planning Commission and the City Council in accordance with Section 19.1007 Type IV Review. The Council decision on the proposal shall be considered the "final decision," for purposes of compliance with Metro Code Chapter 3.09.

B. Notice of the Planning Commission and Council hearings to consider annexation proposals shall follow the procedures of Section 19.1007 Type IV Review as well as the uniform notice requirements provided in Metro Code Section 3.09.030.

C. A staff report shall be issued at least 15 days prior to the hearing, pursuant to the requirements of Metro Code Subsection 3.09.050(b).

D. The final decision shall be made by the Council, by ordinance, after a public hearing. The decision shall be reduced to writing and shall include findings, conclusions, and conditions, if necessary; based on compliance with Subsection 19.1102.3, other implementing ordinances, and the uniform hearing and decision requirements of Metro Code Section 3.09.050.

### 19.1102.2 The Petition

A. A petition to annex to the City will only be accepted for sites located within the City urban growth boundary. A petition to annex may be initiated by a property owner(s)of the area to be annexed or the City, as listed below:

   1. By Consent of All Owners of Land, ORS 222.125. When all the owners of land in the territory to be annexed and not less than 50% of the electors, if any, residing in the territory to be annexed consent in writing to the annexation of their land in the territory and file a statement of their consent with the City.

2. By Triple Majority Consent Petition, ORS 222.170(1). ORS 222.170(1) allows annexation when a majority of the landowners in the territory to be annexed consent in writing with the City. The land owned by the consenting landowners must total over half the area of the land in the territory to be annexed and must have an assessed value totaling more than half of the assessed value of the land in the territory to be annexed.
3. By Double Majority Consent Petition, ORS 222.170(2). When a majority of the electors registered in the territory proposed to be annexed consent in writing to the annexation, and the owners of more than half of the land in that territory consent in writing to the annexation of their land in the territory and file a statement of their consent with the City.
4. By the City Council on its own motion, pursuant to ORS 222.111(2) or the "island" annexation statute, ORS 222.750.
5. Pursuant to the health hazard annexation process, ORS 222.840 to 222.915.

B. A prerequisite to the filing of an annexation petition is a preapplication conference, at which time the Planning Director shall explain the requirements and provide the appropriate forms.

C. An annexation petition shall include the completed petition form and the following information.

1. The minimum petition requirements of Metro Code Section 3.09.040;
2. A narrative that addresses the approval criteria set forth in Subsection 19.1102.3 and Metro Code Subsections 3.09.050(d) and, if applicable, (e);
3. Vicinity, legal, and other descriptive maps necessary to show compliance with Subsection 19.1102.3 and Metro Code Section 3.09.040. This shall include 2 County Assessor's quarter section maps on which the territory to be annexed has been outlined in red;
4. Metes and bounds legal description for the area to be annexed, including road right-of-way where appropriate. Lot and block legal description may be used if the territory includes only platted area and does not include any street rights-of-way.

D. The applicant shall pay the requisite fee. The fee for an annexation shall be established by resolution of the Council.

**19.1102.3 Approval Criteria.**

The City Council shall approve or deny an annexation proposal based on findings and conclusions addressing the following criteria:

A. The subject site must be located within the City urban growth boundary;

B. The subject site must be contiguous to the existing City limits;

C. The requirements of the ORS for initiation of the annexation process must be met;

D. The proposal must be consistent with Milwaukie Comprehensive Plan policies; and

E. The proposal must comply with the criteria of Metro Code Subsections 3.09.050(d) and, if applicable, (e).

## 19.1103 OTHER BOUNDARY CHANGES

### 19.1103.1 Administration and Approval Process

A. A petition for any type of boundary change, other than annexation, shall be processed as provided by State law and Metro Code Chapter 3.09.

B. Boundary change proposals shall be considered only by the City Council. The Council decision on the proposal shall be considered the "final decision" for purposes of compliance with Metro Code Chapter 3.09.

C. Notice of the Council hearing to consider boundary change proposals shall follow the uniform notice requirements provided in Metro Code Section 3.09.030.

D. A staff report shall be issued at least 15 days prior to the hearing, pursuant to the requirements of Metro Code Subsection 3.09.050(b).

E. The final decision shall be made by the Council after a public hearing. The decision shall be reduced to writing and shall follow the uniform hearing requirements of Metro Code Section 3.09.050.

### 19.1103.2 The Petition

A. A prerequisite to the filing of a boundary change petition is a preapplication conference, at which time the Planning Director shall explain the requirements and provide the appropriate forms.

B. A boundary change petition shall include the completed petition form and 13 copies of each of the following, except for each drawing submitted there shall be 12 at the original scale and 1 copy reduced to an 8½- by 11-in paper size.

   1. The minimum petition requirements of Metro Code Section 3.09.040;
   2. A narrative that addresses the approval criteria set forth in Subsection 19.1103.3;
   3. Vicinity, legal, and other descriptive maps necessary to show compliance with Metro Code Section 3.09.040. This shall include 2 County Assessor's quarter section maps on which the territory to be annexed has been outlined in red;
   4. Metes and bounds legal description for the area located within the proposed boundary change, including road right-of-way where appropriate. Lot and block legal description may be used if the territory includes only platted area and does not include any street rights-of-way.

C. The applicant shall pay the requisite fee. The fee for a boundary change shall be established by resolution of the Council.

### 19.1103.3 Approval Criteria

The City Council shall approve or deny a boundary change proposal, other than annexations, based on findings and conclusions addressing the following criteria:

A. The proposal complies with the criteria of Metro Code Subsection 3.09.050(d) and, if applicable, (e).

## 19.1104 EXPEDITED PROCESS

### 19.1104.1 Administration and Approval Process

A. A petition for any type of minor boundary change may be processed through an expedited process as provided by Metro Code Chapter 3.09.

1. Initiation of an expedited boundary change petition must follow the requirements of Metro Code Subsection 3.09.045(a).
2. A prerequisite to the filing of an expedited boundary change petition is a preapplication conference, at which time the Planning Director shall explain the requirements and provide the appropriate forms. The preapplication conference requirement may be waived by the Planning Director pursuant to Subsection 19.1002.2.B.1 or may be met by requesting a preapplication meeting.
3. An expedited boundary change petition shall include the materials required by Subsection 19.1102.2.C for annexations and Subsection 19.1103.2.B for other boundary changes.
4. The applicant shall pay the requisite fee. The fee for an expedited boundary change shall be established by resolution of the Council.
5. Approval criteria for annexations are found in Subsection 19.1102.3 and for other boundary changes in Subsection 19.1103.3.

B. Notwithstanding Subsection 19.107.6, an expedited boundary change proposal shall be considered by the City Council without a public hearing. The Council decision on the proposal shall be considered the "final decision" for purposes of compliance with Metro Code Chapter 3.09. If the petition is for annexation, the decision shall be by ordinance.

C. Notice of petition for an expedited process must be provided to interested persons a minimum of 20 days prior to the final decision and shall follow the expedited notice requirements provided in Metro Code Subsection 3.09.045(b) and ORS 198 and 222. For purposes of this subsection, "interested persons" include the Planning Commission, those residing or owning property within 400 ft of the territory to be annexed, necessary parties as defined in Metro Code Subsection 3.09.02(j), and any persons who have requested notice.

D. A brief report shall be issued at least 7 days prior to the date of decision, pursuant to the requirements of Metro Code Subsection 3.09.045(c).

E. The City zoning and Comprehensive Plan designation for an expedited annexation request shall be automatically applied based on the existing Clackamas County zoning designation in accordance with Table 19.1104.1.E, provided below:

**Table 19.1104.1.E**
**Zoning and Land Use Designations for Boundary Changes**

| County Zoning Designation | Assigned City Zoning Designation | Assigned Comprehensive Plan Land Use Designation |
|---|---|---|
| R-20 | R-10 | Low density residential |
| R-15 | R-10 | Low density residential |
| R-10 | R-10 | Low density residential |
| R-8.5 | R-7 | Low density residential |
| R-7 | R-7 | Low density residential |
| MR1 | R-5 | Moderate density residential |
| MR2 | R-2 | Medium density residential |
| PMD | R-1-B | High density residential |
| HDR | R-1-B | High density residential |
| SHD | R-1 | High density residential |
| C2 | R-O-C | Commercial/high density use |

| Table 19.1104.1.E CONTINUED<br>Zoning and Land Use Designations for Boundary Changes | | |
|---|---|---|
| **County Zoning Designation** | **Assigned City Zoning Designation** | **Assigned Comprehensive Plan Land Use Designation** |
| C3 | C-G | Commercial |
| OC | C-L | Commercial |
| RTL | C-L | Commercial |
| PC | C-CS | Commercial |
| I2 | M | Industrial |
| I3 | M | Industrial |
| BP | BI | Industrial |
| OSM | R-10/CSU | Public |

F. An expedited process cannot be used if a necessary party gives written notice to contest the decision, pursuant to Metro Code Subsection 3.09.045(b) or, in the case of an annexation petition, if the requested zoning designation does not comply with the automatic Comprehensive Plan designation listed above.

### 19.1105 APPEALS

The City Council decision on an annexation or other boundary change may be appealed by a necessary party to the Metro Boundary Appeals Commission, pursuant to the provisions of Metro Code Section 3.09.070. An appeal by any other person will be processed according to State law.

# CHAPTER 19.1200

# SOLAR ACCESS PROTECTION

**SECTIONS:**

**19.1201 Purpose**
**19.1202 Definitions**
**19.1203 Solar Access for New Development**
**19.1204 Solar Balance Point**
**19.1205 Solar Access Permit**

## 19.1201 PURPOSE

### 19.1201.1 The purpose of this chapter is:

A. To provide solar access protection to new development in subdivisions, new and remodeled single-family homes, structures within single-family zoning districts, and homes which make beneficial use of solar energy;

B. To promote energy conservation and the effective use of the sun as a renewable resource;

C. To implement provisions of the Milwaukie Comprehensive Plan encouraging use of solar energy;

D. To provide a means of encouraging investment in solar design and solar equipment.

## 19.1202 DEFINITIONS

### 19.1202.1 For the purposes of this chapter, the following definitions shall apply:

"Azimuth" means a horizontal direction expressed as a distance in angles between the direction of a fixed point and the direction of an object being measured.

"Crown cover" means the area within the drip line or perimeter of the foliage of a tree.

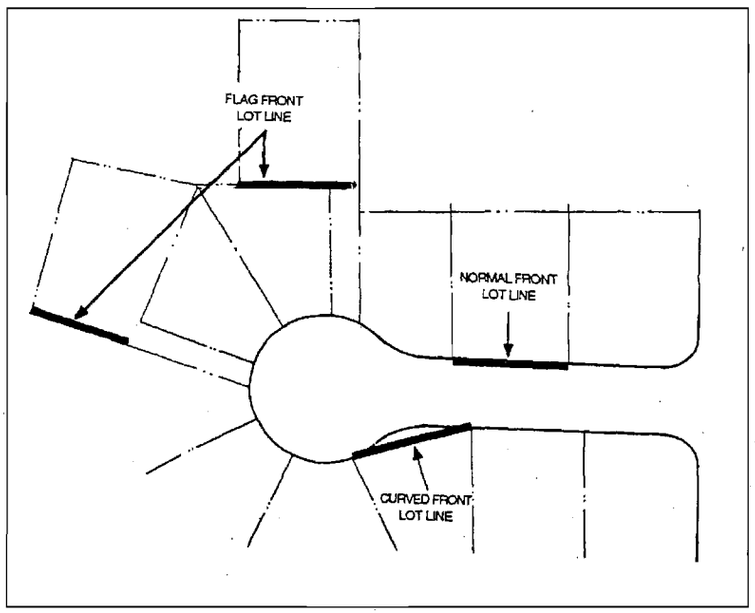
"Development" means any partition, subdivision, or planned unit development that is created under the City's land division or zoning regulations.

"Director" means the Planning Director of the City or designee.

"Exempt tree or vegetation" means the full height and breadth of vegetation that the Director has identified as "solar-friendly," any vegetation listed on a plat map, a document recorded with the plat, or a solar access permit as exempt.

"Front lot line" means for purposes of the solar access regulations, a lot line abutting a street. For comer lots, the front lot line is that with the narrowest frontage. When the lot line abutting a street is curved, the front lot line is the chord or straight line connecting the ends of the curve. For a flag lot, the front lot line is the shortest lot line adjoining the pole portion of the lot, excluding the unbuildable portion of the pole (see Figure 19.1202.1-1).

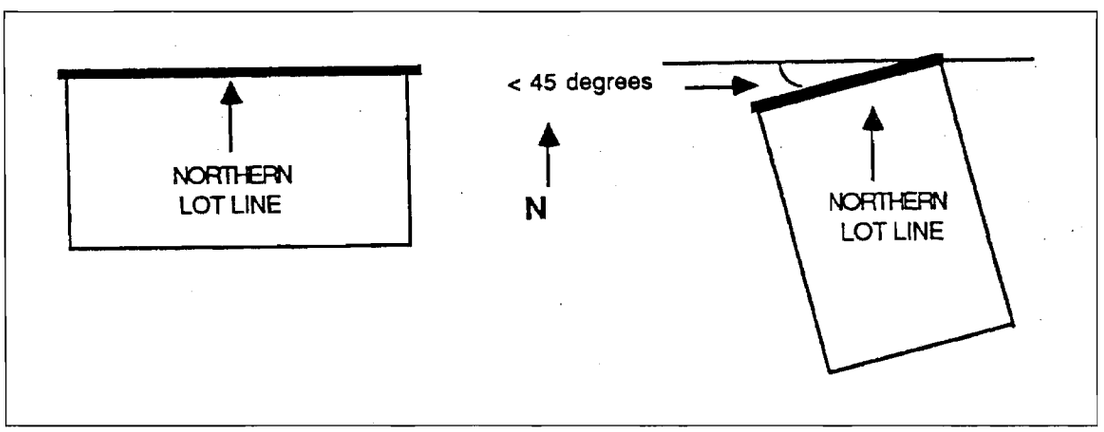
**Figure 19.1202.1-1**
**Front Lot Line**




"Nonexempt tree or vegetation" means vegetation that is not exempt.

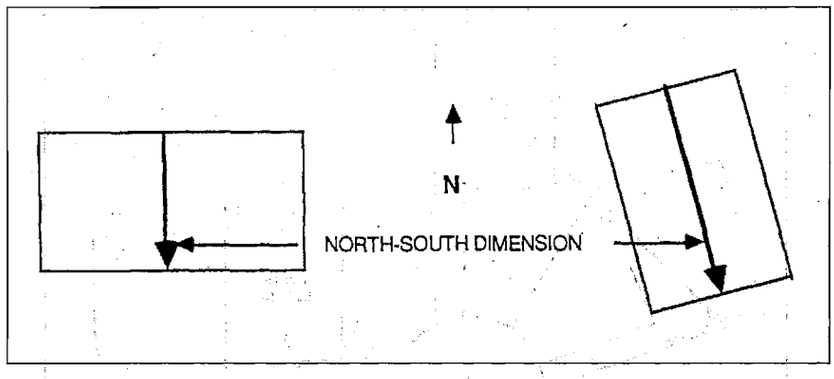
"Northern lot line" means the lot line that is the smallest angle from a line drawn east-west and intersecting the northernmost point of the lot, excluding the pole portion of a flag lot. If the north line adjoins an undevelopable area other than a required yard area, the northern lot line shall be at the north edge of such undevelopable area. If 2 lot lines have an identical angle relative to a line drawn east-west, or if the northern lot line is less than 35 ft, then the northern lot line shall be a line 35 ft in length within the lot, parallel with and at a maximum distance from the front lot line (see Figure 19.1202.1-2).

**Figure 19.1202.1-2**
**Northern Lot Line**



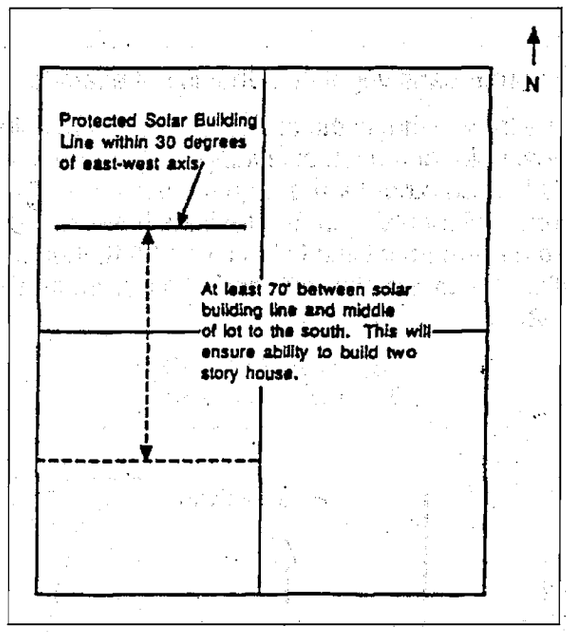

"North-south dimension" means the length of a line beginning at the midpoint of the northern lot line and extending in a southerly direction perpendicular to the northern lot line until it reaches a property boundary (see Figure 19.1202.1-3).

**Figure 19.1202.1-3**
**North-South Dimension of the Lot**




"Protected solar building line" means a line on a plat or map recorded with the plat that identifies the location on a lot where a point 2 ft above may not be shaded by structures or nonexempt trees (see Figure 19.1202.1-4).

**Figure 19.1202.1-4**
**Solar Lot Option 2: Protected Solar Building Line**




"Shade" means a shadow cast by the shade point of a structure or vegetation when the sun is at an altitude of 21.3 degrees and an azimuth ranging from 22.7 degrees east and west of true south.

"Shade point" means the part of a structure or nonexempt tree that casts the longest shadow onto the adjacent northern lot(s) when the sun is at an altitude of 21.3 degrees and an azimuth ranging from 22.7 degrees east and west of true south; except a shadow caused by a narrow object such as a mast or whip antenna, a dish antenna with a diameter of 3 ft or less, a chimney, utility pole, or wire. The height of the shade point shall be measured from the shade point to either the average elevation at the front lot line or the elevation at the midpoint of the front lot line. If the shade point is located at the north end of the ridgeline of a structure oriented

within 45 degrees of a true north-south line, the shade point height computed according to the preceding sentence may be reduced by 3 ft. If a structure has a roof oriented within 45 degrees of a true east-west line with a pitch that is flatter than 5 ft (vertical) in 12 ft (horizontal), the shade point will be the eaves of the roof. If such a roof has a pitch that is 5 ft in 12 ft or steeper, the shade point will be the peak of the roof (see Figures 19.1202.1-5 and 19.1202.1-6).

**Figure 19.1202.1-5**
**Height of the Shade Point of the Structure**

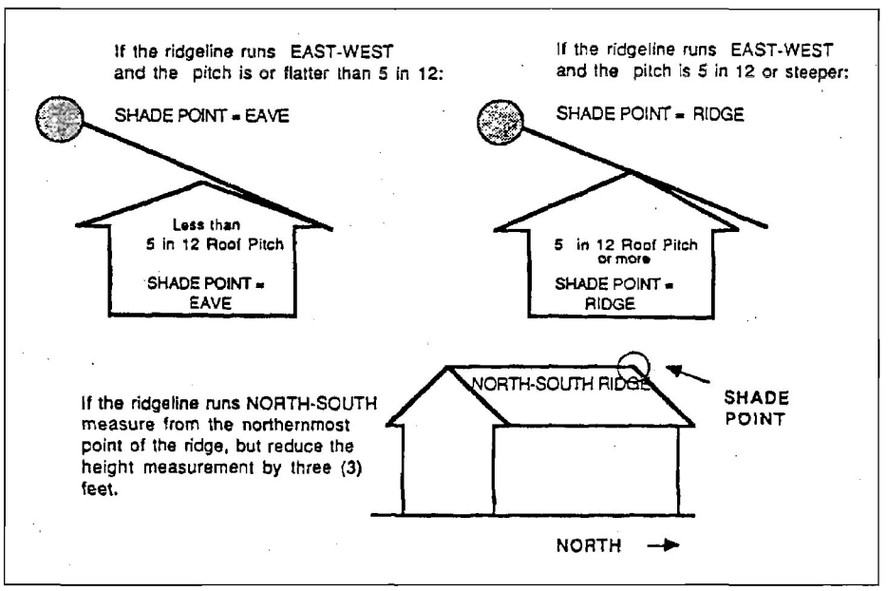
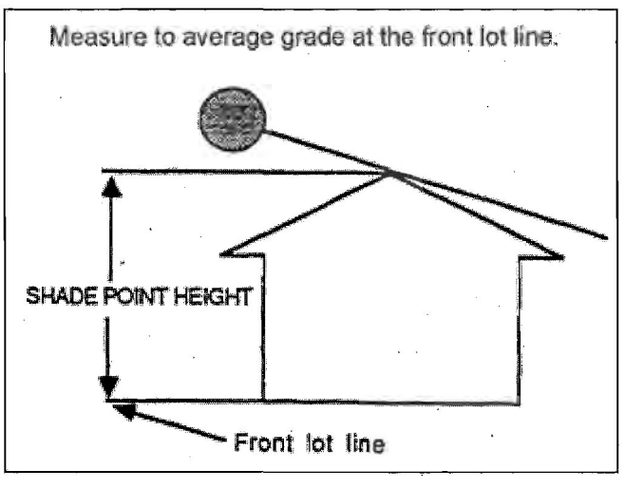
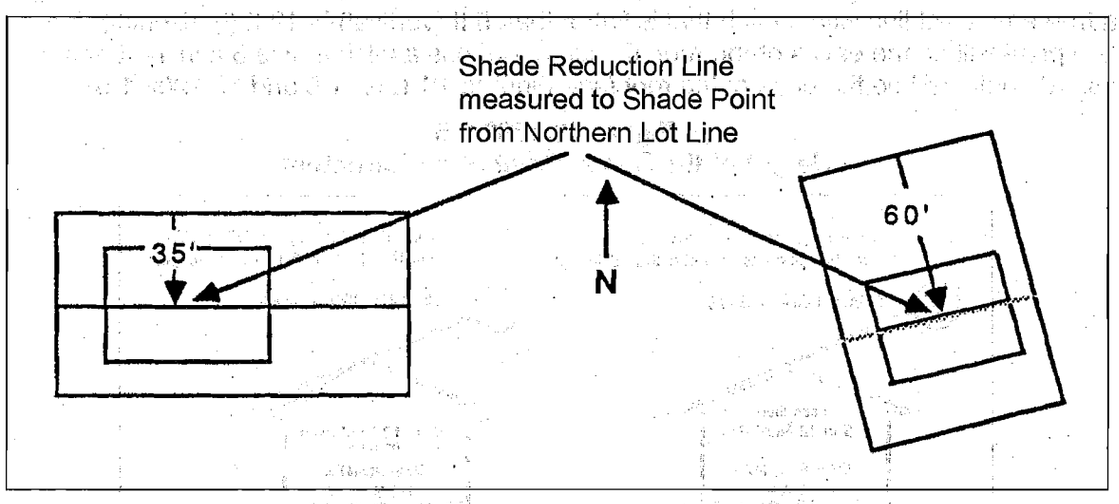



**Figure 19.1202.1-6**
**Shade Point Height**



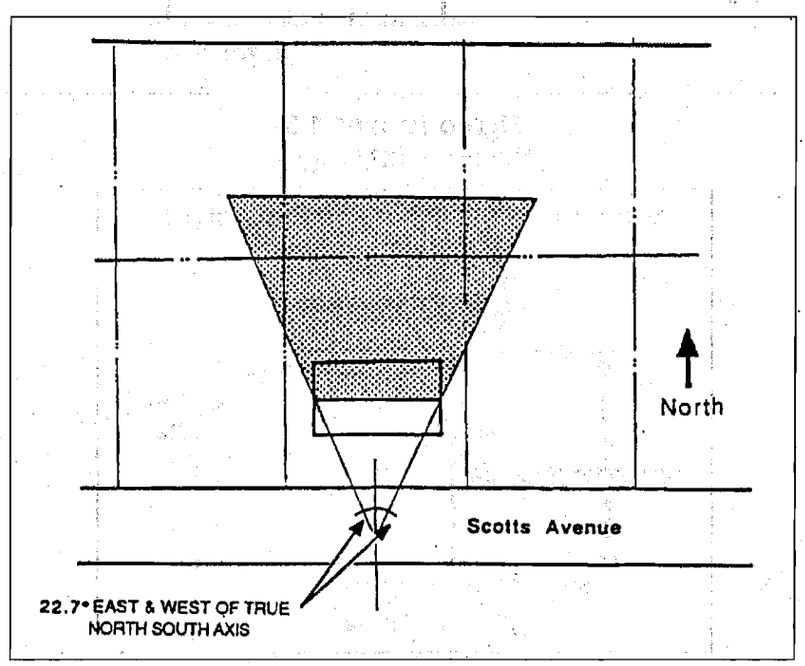

"Shade reduction line" means a line drawn parallel to the northern lot line that intersects the shade point (see Figure 19.1202.1-7).

**Figure 19.1202.1-7**
**Shade Reduction Line**



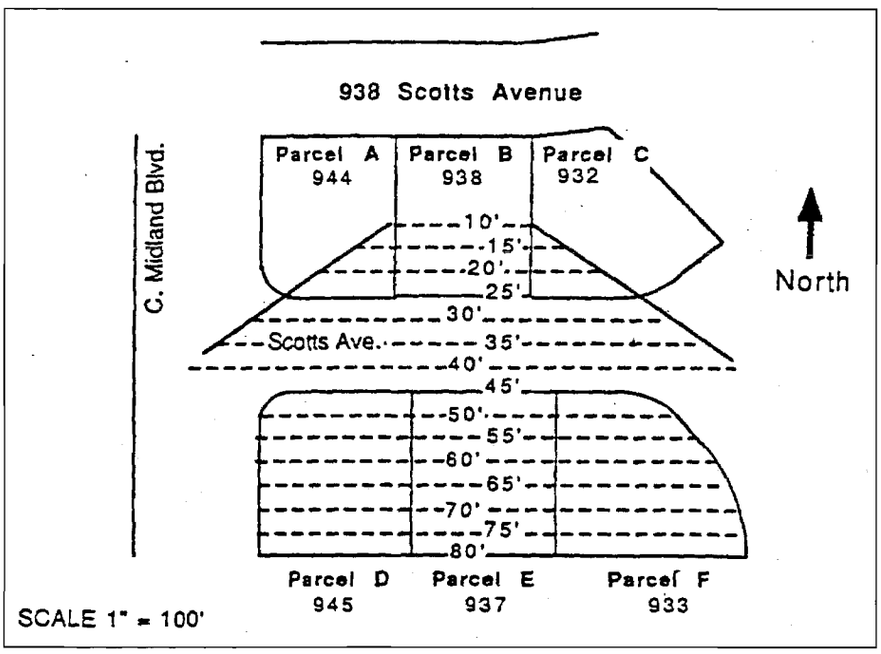

"Shadow pattern" means a graphic representation of an area that would be shaded by the shade point of a structure or vegetation when the sun is at an altitude of 21.3 degrees and an azimuth ranging between 22.7 degrees east and west of true south (see Figure 19.1202.1-8).

**Figure 19.1202.1-8**
**Shadow Pattern**




"Solar access height limit" means a series of contour lines establishing the maximum permitted height for nonexempt vegetation on lots affected by a solar access permit (see Figure 19.1202.1-9).

**Figure 19.1202.1-9**
**Solar Access Height Limit**



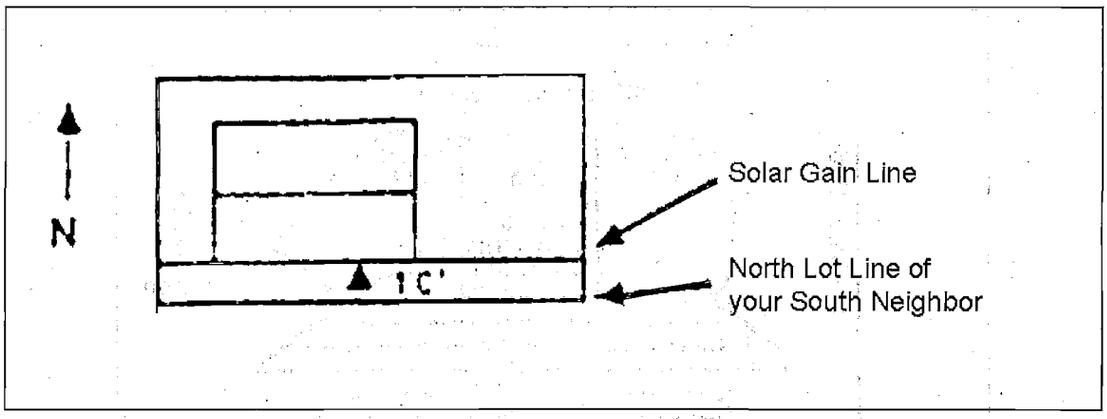

"Solar access permit" means a document issued by the City that describes the maximum height that nonexempt vegetation is allowed to grow on lots to which a solar access permit applies.

"Solar feature" means a device or combination of devices or elements that does or will use direct sunlight as a source of energy for such purposes as heating or cooling of a structure, heating or pumping of water, and generating electricity. Examples of a solar feature include a window that contains at least 20 sq ft of glazing oriented within 45 degrees east and west of true south, a solar greenhouse, or a solar hot water heater. A solar feature may be used for purposes in addition to collecting solar energy, including but not limited to serving as a structural member or part of a roof, wall, or window. A south-facing wall without windows and without other features that use solar energy is not a solar feature for purposes of this chapter.

"Solar-friendly tree" means a tree which the Director has determined does not cause significant winter shade due to foliar period and branch structure. The Director shall maintain a list of generally recognized solar-friendly trees.

"Solar gain line" means a line parallel to the northern property line(s) of the lot(s) south of and adjoining a given lot, including lots separated only by a street, that intersects the solar feature on that lot (see Figure 19.1202.1-10).

**Figure 19.1202.1-10**
**Solar Gain Line**




"South or south-facing" means true south, or 20 degrees east of magnetic south.

"Sun chart" means one or more photographs that plot the position of the sun between 10:30 a.m. and 1:30 p.m. on January 21st, prepared pursuant to guidelines issued by the Director. The sun chart shall show the southern skyline through a transparent grid on which is imposed solar altitude for 45 degree and 30 minute northern latitude in 10 degree increments and solar azimuth from true south in 15 degree increments.

"Undevelopable area" means an area that cannot be used practicably for a habitable structure because of natural conditions, such as slopes exceeding 20% in a direction greater than 45 degrees east and west of true south, severe topographic relief, water bodies, or conditions that isolate one portion of a property from another portion so that access is not practicable to the unbuildable portion; or manmade conditions, such as existing development which isolates a portion of the site and prevents its further development, setbacks, or development restrictions that prohibit development of a given area of a lot by law or private agreement, or existence or absence of easements or access rights that prevent development of a given area.

## 19.1203 SOLAR ACCESS FOR NEW DEVELOPMENT

### 19.1203.1 Purpose

The purposes of solar access provisions for new development are to ensure that land is divided so that structures can be oriented to maximize solar access and to minimize shade on adjoining properties from structures and trees.

### 19.1203.2 Applicability

The solar design standards in Subsection 19.1203.3 shall apply to applications for a development to create lots in single-family zones and for single-family detached dwellings in any zone, except to the extent the Director finds that the applicant has shown one or more of the conditions listed in Subsections 19.1203.4 and 5 exist, and exemptions or adjustments provided for therein are warranted.

### 19.1203.3 *Design Standard*

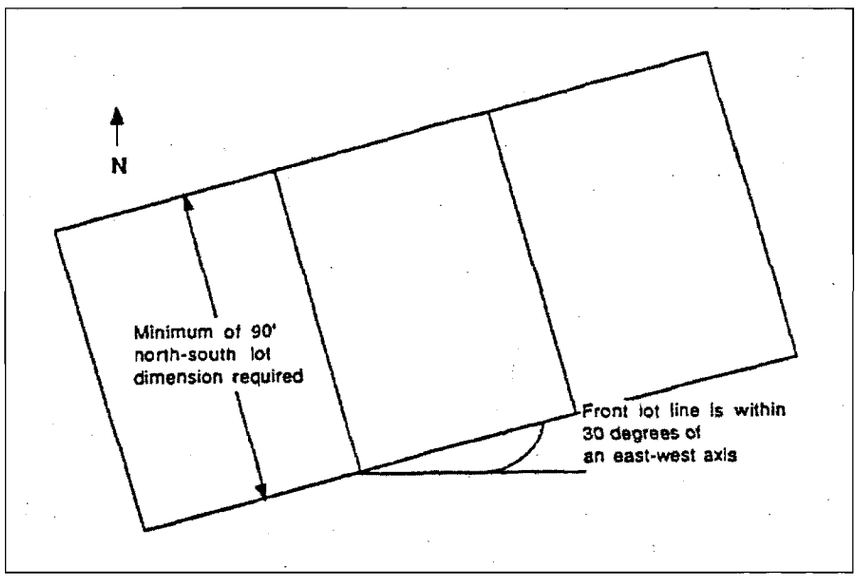
At least 80% of the lots in a development subject to these provisions shall comply with one or more of the options in this subsection; provided a development may, but is not required to, use the options in Subsections 19.1203.3.B or C below to comply with Section 19.1203.

A. Basic Requirement

A lot complies with Subsection 19.1203.3 if it:

1. Has a north-south dimension of 90 ft or more; and
2. Has a front lot line that is oriented within 30 degrees of a true east-west axis (see Figure 19.1203.3).

**Figure 19.1203.3**
**Solar Lot Option 1: Basic Requirements**




B. Protected Solar Building Line Option

In the alternative, a lot complies with Subsection 19.1203.3 if a solar building line is used to protect solar access as follows:

1. A protected solar building line is designated on the plat or in documents recorded with the plat; and
2. The protected solar building line is oriented within 30 degrees of a true east-west axis; and
3. There are at least 70 ft between the protected solar building line and the middle of the north-south dimension of the lot to the south, measured along a line perpendicular to the protected solar building line; and
4. There are least 45 ft between the protected solar building line and the northern edge of the buildable area of the lot, or habitable structures are situated so that at least 80% of their south-facing wall will not be shaded by structures or nonexempt vegetation (see Figure 19.1202.1-4).

C. Performance Option

In the alternative, a lot complies with Subsection 19.1203.3 if:

1. Habitable structures built on that lot will have their long axis oriented within 30 degrees of a true east-west axis, and at least 80% of their ground floor south wall will be

protected from shade by structures and nonexempt trees using appropriate deed restrictions; or

2. Habitable structures built on that lot will orient at least 32% of their glazing, and at least 500 sq ft of their roof area, to face within 30 degrees east or west of true south, and that glazing and roof area are protected from shade by structures and nonexempt trees using appropriate deed restrictions.

### 19.1203.4 Exemptions from Design Standard

A development is exempt from Subsection 19.1203.3 if the Director finds the applicant has shown that one or more of the following conditions apply to the site. A development is partially exempt from Subsection 19.1203.3 to the extent the Director finds the applicant has shown that one or more of the following conditions apply to a corresponding portion of the site. If a partial exemption is granted for a given development, the remainder of the development shall comply with Subsection 19.1203.3.

A. Slopes

The site, or a portion of the site for which the exemption is sought, is sloped 20% or more in a direction greater than 45 degrees east or west of true south, based on a topographic survey by a licensed professional land surveyor or USGS or other officially recognized topographic information.

B. Off-Site Shade

The site, or a portion of the site for which the exemption is sought, is within the shadow pattern of off-site features, such as, but not limited to, structures, topography, or nonexempt vegetation, which will remain after development occurs on the site from which the shade is originating.

1. Shade from an existing or approved off-site dwelling in a single-family residential zone, and from topographic features, is assumed to remain after development of the site.
2. Shade from an off-site structure in a zone other than a single-family residential zone is assumed to be the shadow pattern of the existing or approved development thereon or the shadow pattern that would result from the largest structure allowed at the closest setback on adjoining land, whether or not that structure now exists.
3. Shade from off-site vegetation is assumed to remain after development of the site if: the trees that cause it are situated in a required setback; they are part of a developed area, public park, or legally reserved open space; they are in or separated from the developable remainder of a parcel by an undevelopable area or feature; or they are part of landscaping required pursuant to local law.
4. Shade from other offsite sources is assumed to be shade that exists or that will be cast by development for which applicable local permits have been approved on the date a complete application for the development is filed.

C. On-Site Shade

The site, or a portion of the site for which the exemption is requested:

1. Is within the shadow pattern of on-site features such as, but not limited to, structures and topography which will remain after the development occurs; or
2. Contains nonexempt trees at least 30 ft tall and more than 6 in. in diameter measured 4 ft above the ground, which have a crown cover over at least 80% of the site or the relevant portion. The applicant can show such crown cover exists using a scaled

survey or an aerial photograph. If granted, the exemption shall be approved subject to the condition that the applicant preserve at least 50% of the crown cover that causes the shade that warrants the exemption. The applicant shall file a note on the plat or other documents in the office of the County Recorder binding the applicant to comply with this requirement. The City shall be made a party to any covenant or restriction created to enforce any provision of this section. The covenant or restriction shall not be amended without written City approval.

D. Completion of Phased Subdivision

The site is part of a phased subdivision, none of which was subject to Section 19.1203, and the site and the remainder of the unplatted portion of the phased subdivision contains no more than 20% of the lots in all phases of the subdivision.

### 19.1203.5 Adjustment to Design Standard

The Director shall reduce the percentage of lots that must comply with Subsection 19.1203.3, to the minimum extent necessary, if he or she finds the applicant has shown it would cause or is subject to one or more of the following conditions.

A. Adverse Impacts on Density, Cost, or Amenities

1. If the design standard in Subsection 19.1203.3.A is applied, either the resulting density is less than that proposed, or on-site site development costs (e.g., grading, water, storm drainage, sanitary systems, and road) and solar-related off-site site development costs are at least 5% more per lot than if the standard is not applied. The following conditions, among others, could constrain the design of a development in such a way that compliance with Subsection 19.1203.3.A would reduce density or increase costs per lot in this manner. The applicant shall show which, if any, of these or other similar site characteristics apply in an application for a development:

    a. The portion of the site for which the adjustment is sought has a natural grade that is sloped 10% or more and is oriented greater than 45 degrees east or west of true south, based on a topographic survey of the site by a professional land surveyor, USGS, or other officially recognized topographic information;

    b. There is a significant natural feature on the site, identified as such in the Comprehensive Plan or Development Ordinance, that prevents given streets or lots from being oriented for solar access, and it will exist after the site is developed;

    c. Existing road patterns must be continued through the site or must terminate on the site to comply with applicable road standards or public road plans in a way that prevents given streets or lots in the development from being oriented for solar access;

    d. An existing public easement or right-of-way prevents given streets or lots in the development from being oriented for solar access.

2. If the design standard in Subsection 19.1203.3.A applies to a given lot or lots, significant development amenities that would otherwise benefit the lot(s) will be lost or impaired. Evidence that a significant diminution in the market value of the lot(s) would result from having the lot(s) comply with Subsection 19.1203.3.A is relevant to whether a significant development amenity is lost or impaired.

B. Impacts of Existing Shade

The shadow pattern from nonexempt trees covers over at least 80% of the lot and at least 50% of the shadow pattern will remain after development of the lot. The applicant can show the shadow pattern using a scaled survey of nonexempt trees on the site or using an aerial photograph.

1. Shade from nonexempt trees is assumed to remain if: the trees are situated in a required setback; or they are part of an existing or proposed park, open space, or recreational amenity; or they are separated from the developable remainder of their parcel by an undevelopable area or feature; or they are part of landscaping required pursuant to local law; and they do not need to be removed for a driveway or other development.
2. Also, to the extent the shade is caused by on-site trees or off-site trees on land owned by the applicant, it is assumed to remain if the applicant files, in the office of the County Recorder, a covenant binding the applicant to retain the trees causing the shade on the affected lot(s).

### 19.1203.6 Protection from Future Shade

Structures and nonexempt vegetation must comply with Section 19.1204 on all lots in a development subject to Section 19.1203, including lots for which exemptions or adjustments to Section 19.1203 have been granted.

The applicant shall file a note on the plat or other documents in the office of the County Recorder binding the applicant and subsequent purchasers to comply with the future shade protection standards in Subsection 19.1203.6. The City shall be made a party of any covenant or restriction created to enforce any provision of this section. The covenant or restriction shall not be amended without written City approval.

### 19.1203.7 Application

An application for approval of a development subject to this section shall include the following:

A. Maps and text sufficient to show the development complies with the solar design standard of Subsection 19.1203.3, except for lots for which an exemption or adjustment from Subsection 19.1203.3 is requested, including at least:
   1. The north-south lot dimension and front lot line orientation of each proposed lot;
   2. Protected solar building lines and relevant building site restrictions, if applicable;
   3. For the purpose of identifying trees exempt from Subsection 19.1203.6, a map showing existing trees at least 30 ft tall and over 6 in diameter at a point 4 ft above grade, indicating their height, diameter, and species, and stating that they are to be retained and are exempt; and
   4. Copies of all private restrictions relating to solar access.
B. If an exemption or adjustment to Subsection 19.1203.3 is requested, maps and text sufficient to show that given lots or areas in the development comply with the standards for such an exemption or adjustment in Subsections 19.1203.4 or 5, respectively.

### 19.1203.8 Process for Approval

Requirements for meeting this section shall be processed simultaneously with other application requirements as provided by this title, or in conjunction with building permit requests. The City's decision to grant or deny approval is intended to be ministerial.

## 19.1204 SOLAR BALANCE POINT

### 19.1204.1 Purpose

The purposes of this section are to promote the use of solar energy, to minimize shading of structures by structures and accessory structures, and, where applicable, to minimize shading of structures by trees. Decisions related to this section are intended to be ministerial.

### 19.1204.2 Applicability

This section applies to an application for a building permit for all structures in single-family zones and all single-family detached structures in any zone, except to the extent the Director finds the applicant has shown that one or more of the conditions listed in Subsection 19.1204.5 or 6 exists, and exemptions or adjustments are warranted. In addition, nonexempt vegetation planted on lots subject to the provisions of Subsection 19.1203.6 shall comply with the shade point height standards as provided in Subsections 19.1204.5 and 6 below.

### 19.1204.3 Solar Site Plan Required

An applicant for a building permit for a structure subject to this section shall submit a site plan that shows:

A. The maximum shade point height allowed under Subsection 19.1204.4;

B. If the maximum shade point height is adjusted pursuant to Subsection 19.1204.4.A.2, the average elevation of the rear property line;

C. The location of the shade point, its height relative to the average elevation of the front lot line or the elevation at the midpoint of the front lot line, and its orientation relative to true south; and, if applicable,

D. The solar balance point for the structure as provided in Subsection 19.1204.8.

### 19.1204.4 Maximum Shade Point Height Standard

The height of the shade point shall comply with either Subsection 19.1204.4.A or B below.

A. Basic Requirement

1. The height of the shade point shall be less than or equal to the height specified in Table 19.1204.4 or computed using the following formula. The height of the shade point shall be measured from the shade point to either the average elevation at the front lot line or the elevation at the midpoint of the front lot line. If necessary, interpolate between the 5-ft dimensions listed in Table 19.1204.4.

$$H = \frac{(2 \times SRL) - N + 150)}{5}$$ Where:

| | | |
|---|---|---|
| H | = | The maximum allowed height of the shade point (see Figures 19.1202.1-5 and 19.1202.1-6) |
| SRL | = | Shade reduction line (the distance between the shade point and the northern lot line) (see Figure 19.1202.1-7); and |
| N | = | The north-south lot dimension, provided that a north-south lot dimension more than 90 ft shall use a value of 90 ft for this section. |

**Table 19.1204.4**
**Maximum Permitted Shade Point Height (in feet)**

| Distance to Shade Reduction Line from Northern Lot Line (in feet) | North-South Lot Dimension (in feet) | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 100+ | 95 | 90 | 85 | 80 | 75 | 70 | 65 | 60 | 55 | 50 | 45 | 40 |
| 70 | 40 | 40 | 40 | 41 | 42 | 43 | 44 | | | | | | |
| 65 | 38 | 38 | 38 | 39 | 40 | 41 | 42 | 43 | | | | | |
| 60 | 36 | 36 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | | | | |
| 55 | 34 | 34 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | | | |
| 50 | 32 | 32 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | | |
| 45 | 30 | 30 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | |
| 40 | 28 | 28 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 |
| 35 | 26 | 26 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 |
| 30 | 24 | 24 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 |
| 25 | 22 | 22 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 |
| 20 | 20 | 20 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 15 | 18 | 18 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 10 | 16 | 16 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 5 | 14 | 14 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |

2. Provided, the maximum allowed height of the shade point may be increased 1 ft above the amount calculated using the formula or Table 19.1204.4 for each ft that the average grade at the rear property line exceeds the average grade at the front property line.

B. Performance Option

The proposed structure, or applicable nonexempt vegetation, will shade not more than 20% of the south-facing glazing of existing habitable structure(s), or, where applicable, the proposed structure or nonexempt vegetation comply with Subsections 19.1203.3.B or C. If Subsection 19.1203.3.B Protected Solar Building Line is used, nonexempt trees and the shade point of structures shall be set back from the protected solar building line 2.5 ft for every 1 ft of height of the structure or of the mature height of nonexempt vegetation over 2 ft.

### 19.1204.5 Exemption from the Maximum Shade Point Height Standard

The Director shall exempt a proposed structure or nonexempt vegetation from Subsections 19.1204.3 and 4 if the applicant shows that one or more of the conditions in this subsection exist, based on plot plans or plats, corner elevations or other topographical data, shadow patterns, sun charts or photographs, or other substantial evidence submitted by the applicant.

A. Exempt Lot

When created, the lot was subject to Subsection 19.1203.3 and was not subject to the provisions of Subsection 19.1203.6.

B. Preexisting Shade

The structure or applicable nonexempt vegetation will shade an area that is shaded by one or more of the following:

1. An existing or approved building or structure;
2. A topographic feature;
3. A nonexempt tree that will remain after development of the site. It is assumed a tree will remain after development if it: is situated in a building setback required by local law; is part of a developed area or landscaping required by local law, a public park or landscape strip, or legally reserved open space; is in or separated from the developable remainder of a parcel by an undevelopable area or feature; or is on the applicant's property and not affected by the development. A duly executed covenant also can be used to preserve trees causing such shade.

C. Slope

The site has an average slope that exceeds 20% in a direction greater than 45 degrees east or west of true south based on a topographic survey by a licensed professional land surveyor, USGS or other officially recognized topographic information.

D. Insignificant Benefit

The proposed structure or nonexempt vegetation shades one or more of the following:

1. An undevelopable area;
2. The wall of an unheated space, such as a typical garage;
3. Less than 20 sq ft of south-facing glazing;
4. An undeveloped lot, other than a lot that was subject to Section 19.1203, where:
   a. There are at least 4 single-family detached or attached homes within 250 ft of the lot within the same subdivision or a phase of the subdivision; and
   b. A majority of the homes identified in Subsection 19.1204.5.D.4.a above have an average of less than 20 sq ft of south-facing glazing.

E. Public Improvement

The proposed structure is a publicly owned improvement.

**19.1204.6 Adjustments to the Maximum Shade Point Height Standard**

The Director shall increase the maximum permitted height of the shade point determined using Subsection 19.1204.4 to the extent he or she finds the applicant has shown one or more of the following conditions exists, based on plot plans or plats, corner elevations or other topographical data, shadow patterns, sun charts or photographs, or other substantial evidence submitted by the applicant.

A. Physical Conditions

Physical conditions preclude development of the site in a manner that complies with Subsection 19.1204.4, due to such things as a lot size less than 3,000 sq ft, unstable or wet soils, or a drainage way, public or private easement, or right-of-way.

B. Conflict Between the Maximum Shade Point Height and Allowed Shade on the Solar Feature Standards

A proposed structure may be sited to meet the solar balance point standard described in Subsection 19.1204.8, or be sited as near to the solar balance point as allowed by Subsection 19.1204.8, if:

1. When the proposed structure is sited to meet the maximum shade point height standard determined using Subsection 19.1204.4, its solar feature will potentially be shaded as determined using Subsection 19.1204.7; and
2. The application includes a form provided for that purpose by the City that:
   a. Releases the applicant from complying with Subsection 19.1204.4 and agrees that the proposed structure may shade an area otherwise protected by Subsection 19.1204.4;
   b. Releases the City from liability for damages resulting from the adjustment; and
   c. Is signed by the owner(s) of the properties that would be shaded by the proposed structure more than allowed by the provisions of Subsection 19.1204.4.
3. Before the City issues a permit for a proposed structure for which an adjustment has been granted pursuant to this Subsection 19.1204.6.B, the applicant shall file the form, provided for in Subsection 19.1204.6.B.2 above, in the office of the County Recorder with the deeds to the affected properties.

### 19.1204.7 Analysis of Allowed Shade on Solar Feature

A. An applicant may, but is not required to, perform the calculations in or comply with the standards of this section.

B. Applicants are encouraged to design and site a proposed habitable structure so that the lowest height of any solar feature(s) will not be shaded by buildings or nonexempt trees on lot(s) to the south. The applicant should complete the following calculation procedure to determine if solar feature(s) of the proposed structure will be shaded. To start, the applicant should choose which of the following sources of shade originating from adjacent lot(s) to the south to use to calculate the maximum shade height at the north property line:
   1. Existing structure(s) or nonexempt tree(s); or
   2. The maximum shade that can be cast from future buildings or nonexempt trees, based on Table 19.1204.7.B. If the lot(s) to the south can be further divided, then the north-south dimension is assumed to be the minimum lot width required for a new lot in that zone.

**Table 19.1204.7.B**
**Maximum Permitted Shade Height (in feet)**

| **North-south lot dimension of adjacent lot(s) to the south** | 100 | 95 | 90 | 85 | 80 | 75 | 70 | 65 | 60 | 55 | 50 | 45 | 40 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Allowed shade height at the north property line of adjacent lot(s) to south** | 12 | 12 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 |

C. The height of the lowest point of any solar feature of the proposed structure is calculated with respect to either the average elevation or the elevation at the midpoint of the front lot line of the lot to the south.

D. The applicant can determine the height of the shadow that may be cast upon the applicant's solar feature by the source of shade selected in Subsection 19.1204.7.B by using the following formula or Table 19.1204.7.D.

SFSH = SH - (SGL ÷ 2.5) Where:

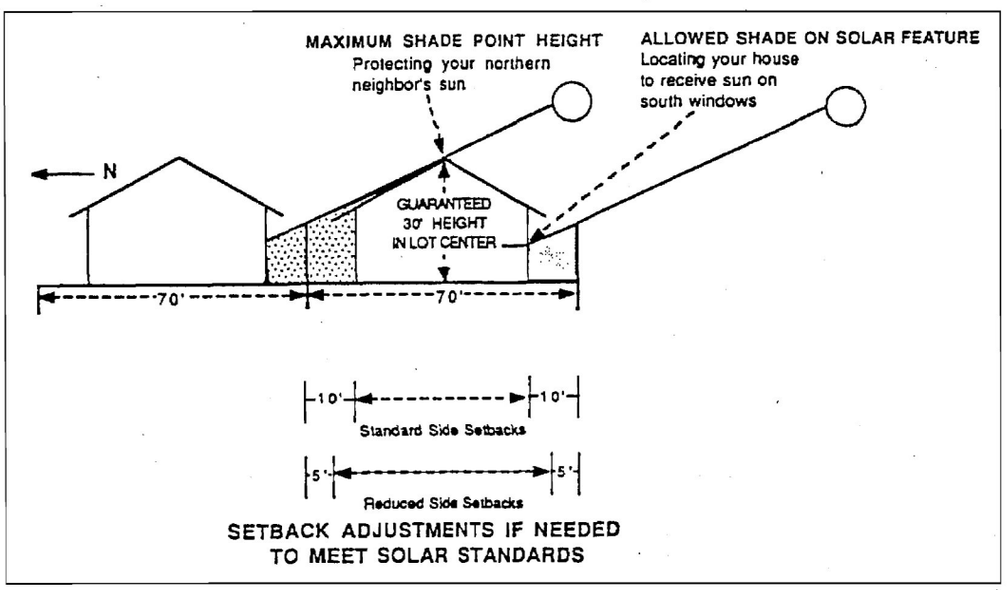
| | | |
|---|---|---|
| SFSH | = | The allowed shadow height on the solar feature (see Figure 19.1204.7); |
| SH | = | The height of the shade at the northern lot line of lot(s) to the south as determined in Subsection 19.1204.7.B above; and |
| SGL | = | The solar gain line (the distance from the solar feature to the northern lot line of adjacent lot(s) to the south) (see Figure 19.1202.1-10) |

Table 19.1204.7.B may be used to determine "SH" in the above formula.

**Table 19.1204.7.D**
**Maximum Permitted Height of Shadow at Solar Feature (in feet)**

| Distance from Solar Gain Line to Lot Line (in feet) | Allowed Shade Height at Northern Lot Line of Adjacent Lot(s) to the South (in feet) | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 22 | 21 | 20 | 19 | 18 | 17 | 16 | 15 | 14 | 13 | 12 |
| 50 | 2 | 1 | | | | | | | | | |
| 45 | 4 | 3 | 2 | 1 | | | | | | | |
| 40 | 6 | 5 | 4 | 3 | 2 | 1 | | | | | |
| 35 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 | | | |
| 30 | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 | |
| 25 | 12 | 11 | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 |
| 20 | 14 | 13 | 12 | 11 | 10 | 9 | 8 | 7 | 6 | 5 | 4 |
| 15 | 16 | 15 | 14 | 13 | 12 | 11 | 10 | 9 | 8 | 7 | 6 |
| 10 | 18 | 17 | 16 | 15 | 14 | 13 | 12 | 11 | 10 | 9 | 8 |
| 5 | 20 | 19 | 18 | 17 | 16 | 15 | 14 | 13 | 12 | 11 | 10 |

**Figure 19.1204.7**
**Solar Balance Point Standard**



E. If allowed shade height on the solar feature calculated in Subsection 19.1204.7.D above is higher than the lowest height of the solar feature calculated in Subsection 19.1204.7.C above, the applicant shall be encouraged to consider changes to the house design or location which would make it practical to locate the solar feature so that it will not be shaded in the future.

### 19.1204.8 Solar Balance Point

If a structure does not comply with maximum shade point height standard in Subsection 19.1204.4 and the allowed shade on a solar feature standard in Subsection 19.1204.7, then the solar balance point of the lot shall be calculated. The solar balance point is the point on the lot where a structure would be the same from complying with both of these standards.

### 19.1204.9 Yard Setback Adjustment

The City shall grant an adjustment to the side, front, and/or rear yard setback requirement(s) by up to 50% if necessary to build a proposed structure so it complies with either the shade point height standard in Subsection 19.1204.4, the allowed shade on a solar feature standard in Subsection 19.1204.7, or the solar balance point standard in Subsection 19.1204.8. This adjustment is not intended to encourage reductions in available solar access or unnecessary modification of setback requirements and shall apply only if necessary for a structure to comply with the applicable provisions of this chapter.

A. R-1, R-2, R-2.5, R-3, R-5, and R-7 Zones

1. A front yard setback may be reduced to not less than 10 ft.
2. A rear yard setback may be reduced to not less than 10 ft.
3. A side yard setback may be reduced to not less than 3 ft.

B. R-10 Zone

1. A front yard setback may be reduced to not less than 15 ft.
2. A rear yard setback may be reduced to not less than 15 ft.
3. A side yard setback may be reduced to not less than 5 ft.

### 19.1204.10 Application and Review Process

An application for a building permit shall include the information necessary to meet the provisions of Subsection 19.1204.4, and shall be processed pursuant to Section 19.1004 Type I Review. The Building Official shall refer the plan to the Director for review and approval prior to issuing a building permit, or the Director may delegate this responsibility for review and approval to the Building Official.

## 19.1205 SOLAR ACCESS PERMIT

### 19.1205.1 Purpose

The purpose of this section is to protect solar access to solar features on lots designated or used for a single-family detached dwelling under some circumstances. It authorizes owners of such lots to apply for a certification permit that, if granted, prohibits solar features from being shaded by certain future vegetation on and off the permittee's site.

### 19.1205.2 Applicability

An owner or contract purchaser of property may apply for and/or be subject to a solar access permit for a solar feature if that property is in a single-family zone or is (or will be) developed

with a single-family dwelling. The City's decision to grant or deny a solar access permit is intended to be ministerial.

**19.1205.3 Approval Standards for a Solar Access Permit**

The Director shall approve an application for a solar access permit if the applicant shows:

A. The information contained in the application is complete and accurate; and

B. Nonexempt vegetation on the applicant's property does not shade the solar feature, as demonstrated by the site plan submitted and the specific information required in Subsection 19.1205.5.

**19.1205.4 Duties Created by Solar Access Permit**

A. A party to whom the City grants a solar access permit shall:

1. Record the permit, legal descriptions of the properties affected by the permit, the solar access height limit, and the site plan required in Subsection 19.1205.5.C, with such modifications as required by the Director, in the office of the County Recorder with the deeds to the properties affected by it, indexed by the names of the owners of the affected properties, and shall pay the fees for such filing;

2. Install the solar feature in a timely manner as provided in Subsection 19.1205.8; and

3. Maintain nonexempt vegetation on the site so it does not shade the solar feature.

B. An owner of property burdened by a solar access permit shall be responsible and pay all costs for keeping nonexempt vegetation from exceeding the solar access height limit. However, vegetation identified as exempt on the site plan required in Subsection 19.1205.5.C, vegetation an owner shows was in the ground on the date an application for a solar access permit is filed, and solar-friendly vegetation are exempt from the solar access permit.

**19.1205.5 Application Contents**

An application for a solar access permit shall contain the following information:

A. A legal description of the applicant's lot and a legal description, owner's names, and owner's addresses for lots all or a portion of which are within 150 ft of the applicant's lot and 54 degrees east and west of true south, measured from the east and west corners of the applicant's south lot line. The records of the County Assessor's office shall be used to determine who owns property for purposes of an application. The failure of a property owner to receive notice shall not invalidate the action if a good faith attempt was made to notify all persons who may be affected.

B. A scaled plan of the applicant's property showing:

1. Vegetation in the ground as of the date of the application if, when mature, that vegetation could shade the solar feature; and

2. The approximate height above grade of the solar feature, its location, and its orientation relative to true south.

C. A scaled plan of the properties on the list, required in Subsection 19.1205.5.A above, showing:

1. Their approximate dimensions; and

2. The approximate location of all existing vegetation on each property that could shade the solar feature(s) on the applicant's property.

D. For each affected lot, the requested solar access height limit. The solar access height limit is a series of contour lines establishing the maximum permitted height for nonexempt vegetation on lots affected by a solar access permit (see Figure 19.1202.1-9). The contour lines begin at the bottom edge of a solar feature for which a permit is requested and rise in 5-ft increments at an angle to the south not less than 21.3 degrees from the horizon and extend not more than 54 degrees east and west of true south. Notwithstanding the preceding, the solar access height limit at the northern lot line of any lot burdened by a solar access permit shall allow nonexempt vegetation on that lot whose height causes no more shade on the benefited property than could be caused by a structure that complies with the solar balance point provisions for existing lots.

E. A fee as required by the City.

F. If available, a statement signed by the owner(s) of some or all of the property(ies) to which the permit will apply if granted, verifying that the vegetation shown on the plan, submitted pursuant to Subsection 19.1205.5.C above, accurately represents vegetation in the ground on the date of the application. The City shall provide a form for that purpose. The signed statements provided for herein are permitted but not required for a complete application.

**19.1205.6 Application Review Process**

A. Unless waived by the Director, prior to filing an application for a solar access permit, an applicant or applicant's representative shall pay the fee required by Subsection 19.1205.5.E and shall meet with the Director or designee to discuss the proposal and the requirements for an application. If a meeting is held, the Director shall convey a written summary of the meeting to the applicant by mail within 5 calendar days of the meeting.

B. After the preapplication meeting is held or waived, the applicant may file an application containing the information required in Subsection 19.1205.5 above.

C. Within 7 calendar days after an application is filed, the Director or designee shall determine whether the application is complete and, if it is not complete, notify the applicant in writing specifying what is required to make it complete.

D. Within 14 calendar days after the Director decides an application for a solar access permit is complete, the Director or designee shall issue a written decision tentatively approving or denying the request, together with reasons therefor, based on the standards of Subsection 19.1205.3.

1. If the tentative decision is to deny the permit, the Director shall mail a copy of the decision to the applicant.
2. If the tentative decision is to approve the permit, and the owners of all affected properties did verify the accuracy of the plot plan as authorized under Subsection 19.1205.5.F, the Director shall mail a copy of the decision to the applicant and affected parties by certified mail, return receipt requested.
3. If the tentative decision is to approve the permit, and the owners of all affected properties did not verify the accuracy of the plot plan as permitted under Subsection 19.1205.5.F, the Director shall send a copy of the tentative decision by certified mail, return receipt requested, to the applicant and to the owners of affected properties who did not sign the verification statement, pursuant to Subsection 19.1205.5.F. If the Director determines that the owners of a given property affected by the permit are not the occupants of that property, then the Director also shall send a copy of the notice to the occupants of such property.

a. The notice sent to the applicant shall include a sign that says a solar access permit for the property has been tentatively approved, and that informs readers where to obtain more information about it. The applicant shall be instructed to conspicuously post the sign so it is visible from right-of-way adjoining the property, and to sign and return a form provided by the Director certifying that the sign was posted as provided herein not more than 14 days after the tentative decision was mailed.

b. The notice shall include the plot plans required in Subsections 19.1205.5.B and C above, the proposed solar access height limits, and duties created by the permit.

c. The notice shall request recipients to verify that the plot plan shows all nonexempt vegetation on the recipient's property, and to send the Director comments in writing within 14 calendar days after the tentative decision is mailed if the recipient believes the applicant's plot plan is inaccurate.

4. Within 28 days after notice of a tentative decision is mailed to affected parties, the Director shall consider responses received from affected parties and/or an inspection of the site, modify the plot plan and the permit to be consistent with the accurate information, and issue a final decision. The Director shall send a copy of the permit and solar access height limits to the owners of each property affected by the permit by certified mail, return receipt requested.

E. If the application is approved, and before the permit is effective, the applicant shall record the permit, associated solar access height limits, legal descriptions for the affected properties, and the site plan required in Subsection 19.1205.5.C, with such modifications as required by the Director, in the office of the County Recorder with the deeds to the properties affected by it.

**19.1205.7 Permit Enforcement Process**

A. Enforcement Request

A solar access permittee may request the City to enforce the solar access permit by providing the following information to the Director:

1. A copy of the solar access permit and the plot plans submitted with the permit;

2. The legal description of the lot(s) on which alleged nonexempt vegetation is situated, the address of the owner(s) of that property, and a scaled site plan of the lot(s) showing the nonexempt vegetation; and

3. Evidence the vegetation violates the solar access permit, such as a sun chart, photograph, shadow pattern, and/or photographs.

B. Enforcement Process

If the Director determines the request for enforcement is complete, they shall initiate an enforcement action pursuant to applicable provisions of the Milwaukie Municipal Code. The Director shall not enforce the permit provisions where a property owner can show that vegetation was in the ground on the date the permit application was filed with the City.

**19.1205.8 Expiration and Extension of a Solar Access Permit**

A. Expiration

Every permit issued by the Director under the provisions of this section shall expire if the construction of the solar feature protected by such permit is not commenced within 180 days from the date of such permit, or if the construction of the solar feature protected by such permit is suspended or abandoned at any time after the work is commenced for a

period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further that such suspension or abandonment has not exceeded 1 year. If the permittee does not show construction of the solar feature will be started within 180 days from the date of the permit or the extension, or if the solar feature is removed, the Director shall terminate the permit by recording a notice of expiration in the office of the County Recorder with the deeds to the affected properties.

B. Extension

Any permittee holding an unexpired permit may apply for an extension of the time within which he or she may commence work under that permit. The permittee shall state reasons that can be deemed to be good and satisfactory by the Director. The Director may extend the time for action by the permittee for a period not exceeding 180 days, upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

# Municipal Code Title 17 Land Division

## CHAPTER 17.04 ADMINISTRATION AND ENFORCEMENT

### 17.04.110 Determinations of Legal Status

Requests for determinations on the legal status of units of land shall be processed pursuant to Section 19.903 Code Interpretations and Director Determinations.

## REFERENCE UPDATES

The following text amendments are also proposed to Title 17:

- All references to Title 19 chapter/section numbers updated.
- All references to review types updated.

**Amended text follows.**

**17.04.100:**

Legislative amendments to this title shall be made in accordance with Chapter 19.1000 and Section 19.902.

**17.12.020:**

A. Applications for land division and property boundary changes shall be processed in accordance with Chapter 19.1000 Type I, Type II, and Type III procedures as indicated in this section.

**17.12.020.B:**

1. Type III review may be changed to Type II review, or a Type II review may be changed to a Type I review, upon finding the following:
2. Type III review may be required in the following situations:

**Table 17.12.020**
**Boundary Change Review Procedures**

| Boundary Change Action | Type I | Type II | Type III |
|---|---|---|---|

**17.12.020.D:**

1. Applications for preliminary partition plat shall be processed in accordance with Section 19.1005 Type II Review. Should any associated application subject to Type III review be submitted in conjunction with a partition, the partition application shall be processed according to Section 19.1006 Type III Review.

**17.12.020.E:**

Applications for subdivision preliminary plat applications shall be processed in accordance with Section 19.1006 Type III Review.

**17.12.020.F:**

Applications for final plats of partitions and subdivisions shall be processed in accordance with Section 19.1004 Type I Review.

**17.16.020.A:**

The Planning Director shall review applications for consistency with submission requirements of this chapter. Application submissions that do not meet the requirements of this chapter shall be deemed incomplete for the purpose of ORS 227.178 and Chapter 19.1000. The Planning Director shall provide to the applicant notice of whether an application is complete or incomplete in accordance with ORS 227.178 and Subsection 19.1003.3.

**17.28.020:**

All land divisions and boundary changes that increase the number of lots shall be subject to the requirements and standards contained in Chapter 19.700 Public Facility Improvements and the Public Works Standards for improvements to streets, sidewalks, bicycle facilities, transit facilities, and public utilities.

**17.28.040.D:**

Lot shape standards may be adjusted subject to Section 19.911 Variances.

**17.28.060.A:**

Flag lot design shall be consistent with Subsection 19.504.9.

**17.32.010:**

In addition to other requirements, improvements installed by the applicant, either as a requirement of these regulations or their own option, shall conform to the requirements of this title and to improvement standards and specifications in the Public Works Standards and Chapter 19.700 Public Facility Improvements. The improvements shall be installed in accordance with the following procedure:

**17.44.010:**

A variance of any provision of this title may only be granted in accordance with Section 19.911.

# Municipal Code Title 14 Signs

### 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 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. 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, 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 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.

### REFERENCE UPDATES

The following text amendments are also proposed to Title 14:

- All references to Title 19 chapter/section numbers updated.
- All references to review types updated.

**Amended text follows.**

**14.08.040:**

The City Manager or the Planning Director shall have the power and duty to interpret and enforce the provisions of this chapter.

**14.08.050:**

An appeal of a ruling by the City Manager, Planning Director, or Planning Commission regarding a requirement of this chapter may be made per Section 19.1010 Appeals.

**14.08.090:**

C. The standards of the underlying zone may be increased to the standards in Table 14.08.090.C per Section 19.1006 Type III Review.

**14.12.010:**

E. Banners on community service use properties, as defined in Subsection 19.904.2, not exceeding a total display area of 40 square feet per face per site, and pennants not to exceed a length of 50 feet per site. Such banners and pennants may remain in place for 6 months or less in any 1 calendar year.

**14.16.060.H:**

3. Awning signs shall 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:

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:

**14.32.020:**

B. The review authority shall hold a public hearing for any adjustment request which is 25% or more of the required standard per the provisions of Section 19.1006 Type III Review. Adjustment requests of less than 25% from the required standard shall be reviewed by the Planning Director per the provisions of Section 19.1005 Type II Review. Within 5 days after a decision has been rendered with reference to a request for an adjustment, the City Manager or duly authorized representative shall provide the applicant with notice of the decision of the review authority.

# MUNICIPAL CODE (non-Planning titles)

**REFERENCE UPDATES**

The following text amendments are proposed to the non-Planning titles of the Municipal Code:

- All references to Title 19 chapter/section numbers updated.
- All references to review types updated.

**Amended text follows.**

**2.16.010.A.9:**

f. Review and make recommendation on all applications requesting designation or deletion of a landmark and placement or removal on the cultural resources inventory, as provided under Zoning Ordinance Subsection 19.403.4,

g. Review and make recommendation on all applications requesting designation or deletion of an historic district as provided under Zoning Ordinance Subsection 19.403.4,

i. Review all demolition permits affecting landmarks, as provided under Zoning Ordinance Subsection 19.403.7,

**3.25.010:**

Dwelling Unit. As defined in Section 19.201.

**12.16.050:**

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.

**12.16.060:**

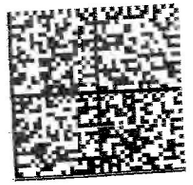
Appeal of any access management requirement or standard of Section 12.16.040 not associated with a land use decision is subject to the provisions of Section 19.1006 Type III Review.

**13.14.025.B:**

All users of the public stormwater system, and any person or entity whose actions may affect the system, shall comply with all applicable federal, State, and local laws, including Section 19.402 Water Quality Resource Regulations. Compliance with the requirements of this chapter shall in no way substitute for, or eliminate the necessity for compliance with, applicable federal, State, and local laws.

**18.04.150.F.2.d:**

(2) The proposed excavation is authorized under applicable municipal code provisions including Section 19.402 Water Quality Resource Regulations; and



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MILWAUKIE

**Planning Department**
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