



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

NOTICE OF ADOPTED AMENDMENT

July 3, 2006



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Milwaukie Plan Amendment
DLCD File Number 001-06

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. 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: July 18, 2006

This amendment was submitted to DLCD for review 45 days 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 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.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Stacy Hopkins, DLCD Regional Representative
Katie Mangle, City of Milwaukie

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DLCD

Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

<input type="checkbox"/> Hand delivered	<input type="checkbox"/> email	<input type="checkbox"/> mailed
DEPT OF		
JUN 27 2006		
LAND CONSERVATION AND DEVELOPMENT		
For DLCD Use Only		

Jurisdiction: City of Milwaukie Local file number: 2A-06-01/CP-06-01
 Date of Adoption: June 20, 2006 Date Mailed: June 27, 2006
 Date original Notice of Proposed Amendment was mailed to DLCD: March 24, 2006

- | | |
|---|---|
| <input checked="" type="checkbox"/> Comprehensive Plan Text Amendment | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input checked="" type="checkbox"/> Land Use Regulation Amendment | <input type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: _____ |

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

Comprehensive Plan amendments to direct City policy to pursue decommissioning of the Kellogg Creek Wastewater Treatment Plant in favor of a regionalized system.
Zoning text amendments to 19.321-Community Service Overlay, to clarify criteria and review procedures, and modernize language.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

City Council tabled the zoning text amendments that address the Kellogg plant as a Nonconforming Use.

Plan Map Changed from: _____ to: _____

Zone Map Changed from: _____ to: _____

Location: _____ Acres Involved: _____

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: 2, 5, 6, 8, 11, 15

Was and Exception Adopted? YES NO

DLCD File No.: 001-06(15109)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

- Forty-five (45) days prior to first evidentiary hearing? Yes No
If no, do the statewide planning goals apply? Yes No
If no, did Emergency Circumstances require immediate adoption? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

Clackamas County, Clackamas Co. Service District #1

Local Contact: Katie Mangle Phone: (503) 786-7600 Extension: _____
Address: 6101 SE Johnson Creek Blvd. City: Milwaukie, OR
Zip Code + 4: 97206- Email Address: kmanglek@ci.milwaukie.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

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

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to mara.ulloa@state.or.us - **ATTENTION: PLAN AMENDMENT SPECIALIST.**

ORDINANCE NO. 1962
MILWAUKIE, OREGON

AN ORDINANCE AMENDING PROVISIONS OF THE MILWAUKIE COMPREHENSIVE PLAN RELATING TO WATER RESOURCES, LAND USES, AND PUBLIC FACILITIES AND AMENDING SECTION 19.321 OF THE MUNICIPAL CODE RELATING TO COMMUNITY SERVICE USES

WHEREAS, Chapter 19.321 of the Municipal Code relating to community services has provided a means for allowing uses that benefit the community to be sited throughout the City;

WHEREAS, problems have arisen in applying Chapter 19.321 that demonstrate that revisions to the Chapter are needed to provide clarity for decision makers, City staff, applicants and the public regarding community service uses;

WHEREAS, the Kellogg Creek Wastewater Treatment Plant, owned and operated by Clackamas County Service District No. 1 (CCSD1), has operated for years on Milwaukie's riverfront;

WHEREAS, the Kellogg Creek Wastewater Treatment Plant has provided an essential public service to both citizens of Milwaukie and those within CCSD1, but at the same time has burdened the City with a wastewater treatment plant adjacent to Riverfront Park, the City's downtown, and Island Station neighborhood;

WHEREAS, the goal of Chapter 19.321 has been to allow community service uses when appropriately located, designed, and operated with minimum adverse impacts on neighborhoods;

WHEREAS, major utility facilities, under most circumstances, have adverse impacts far greater than those of community service uses expressly allowed by Chapter 19.321;

WHEREAS, under some circumstances, it may be possible to locate, design, and operate major utility facilities using modern technologies and designs to reduce their impacts so their impacts do not exceed the impacts of typical community service uses;

WHEREAS, the City's Comprehensive Plan has long called for the relocation of the Kellogg Creek Wastewater Treatment Plant to a different location with less impact on the City, while assuring continued treatment of the City's sewage;

WHEREAS, these Comprehensive Plan provisions have not been effective in removing the wastewater treatment plant;

WHEREAS, the City and CCSD1 agreed to a plan for a regionalized wastewater system that would provide improved sewer service, environmental benefits, cost savings, and the removal of the Kellogg Creek Wastewater Treatment Plant, but which was terminated by the Clackamas

ORDINANCE NO. 1962

Page 1

County Board of Commissioners;

WHEREAS, the regionalized plan previously agreed to provides a more effective and efficient approach to sewage treatment than the continued operation of the Kellogg Creek Sewage Treatment Plant;

WHEREAS, it is in the public interest to pursue a plan for sewage treatment that is better for the environment and results in long term savings;

WHEREAS, the City will cooperate with CCSD1 and others in either reinstating the proposal for regionalized wastewater treatment or developing a proposal that would have similar benefits;

WHEREAS, having the Kellogg Creek Treatment Plant remain in service indefinitely is expected to adversely impact the environment and the rates for sewage treatment as compared to alternatives that have already been considered by the City and CCSD1, and will have continued adverse impacts on Milwaukie's Riverfront Park, downtown, and the Island Station neighborhood, unless such impacts are expressly mitigated through plant redesign.

WHEREAS, the City Planning Commission has, after a duly noticed public hearing, recommended that the City Council amend Comprehensive Plan provisions relating to the Kellogg Creek Sewage Treatment Plant and has recommended that the Council amend Chapter 19.321 relating to Community Service uses, both to address various identified problems with the Chapter and to address major utility facilities;

WHEREAS, the City Council has held a duly noticed public hearing to consider the Planning Commission's recommendation and has decided to adopt the changes to the Comprehensive Plan and Municipal Code recommended by the Planning Commission other than the Municipal Code provisions relating to major utility facilities, and has decided to alter some of the language and add additional language for clarity and consistency; now therefore

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1: The Milwaukie Comprehensive Plan is amended as shown in Exhibit 1, attached hereto and incorporated by this reference.

Section 2: Municipal Code Section 19.321 and cross-references to that section are amended as shown in Exhibit 2, attached hereto and incorporated by this reference.

Section 3: The Findings in Support of Approval included as Attachment 1 to the Staff Report to the Council are adopted as findings in support of this decision. Pages 1 through 7 of the Staff Report to the Council are adopted as additional findings.

Section 4: This ordinance shall take effect 30 days after adoption.


ORDINANCE NO. 1962

Page 2

Read the first time on 6/20/06, and moved to second reading by 5-0 vote of the City Council.

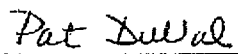
Read the second time and adopted by the Council on 6/20/06.

Signed by the Mayor on 6/20/06.



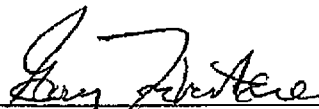
Mayor

ATTEST:



Pat DuVal, City Recorder

APPROVED AS TO FORM:
RAMIS, CREW, CORRIGAN, LLP



City Attorney

Amendments to Milwaukie Comprehensive Plan

Underlined ~~text~~ is to be inserted

Strikeout ~~text~~ is to be deleted

CHAPTER 3, ENVIRONMENTAL AND NATURAL RESOURCES

Air, Water and Land Resources Quality Element, Objective 4, Policy 1

Milwaukie will continue to support and participate in regional planning programs to improve sanitary sewer services in the area. The City will continue to cooperate with Clackamas County Service District #1 (CCSD1) for the collection and treatment of sanitary sewage. Such cooperation shall include cooperation with CCSD1 regarding regionalized wastewater treatment and replacement or major overhaul of the Kellogg Creek Wastewater Treatment plant to eliminate impacts of that plant on the City and the neighborhood.

CHAPTER 4- LAND USE:

Recreational Needs Element, Objective 7 Policy 5

~~The City will cooperate with Clackamas Sewer District #1 to encourage the continued public use of portions of the Kellogg Sewage Treatment Plant site. The Downtown and Riverfront Land Use Framework Plan anticipates redevelopment of the Kellogg Wastewater Treatment Plant this site in the future. The City will make reasonable efforts to bring about the decommissioning of the Kellogg Wastewater Treatment Plant in an expeditious but orderly fashion that assures proper sewage treatment for Milwaukie citizens while effectuating a transition to treatment at another location. Reasonable efforts may include revising the Zoning Ordinance to make the existing facility a nonconforming use and restricting any modification of the sewage treatment use at that site.~~ Riverfront access recreation will be maintained with any redevelopment of the treatment plant site.

CHAPTER 5 – TRANSPORTATION/PUBLIC FACILITIES/ENERGY CONSERVATION:

Public Facilities and Services Element, Objective 5, Policy 1

The City will continue to cooperate with the Clackamas County Service District No. 1 in contracting for capacity of the Kellogg Creek Treatment Plant or other plant or plants. The City will comply with Federal and State clean water requirements in managing the wastewater collection system.

Public Facilities and Services Element, Objective 5, Policy 5

~~The City will participate in examining feasible alternatives for decommissioning the Kellogg Creek Treatment Plant. The City will pursue a regional approach, working in partnership with special districts in the North Clackamas County area, to assure adequate sewer service to accommodate projected growth in Milwaukie.~~

The City will use best efforts to decommission the Kellogg Creek Wastewater Treatment Plant and will cooperate with the County, county service districts, Metro, other affected cities, and other parties in examining feasible alternatives for sewage disposal in the transition from the Kellogg plant to some other sewage treatment facility. The existing plant is aging and will continue to need constant expensive upgrades. A new plant with modern technology and design and economies of scale will provide better sewage treatment and environmental protection. The City's preferred alternative is a regionalized system with a single plant serving all of the area currently served by CCSD No. 1, the Tri-City Service District, and the City of Milwaukie. Such a system would provide for better, more environmentally-friendly sewage treatment, and result in economies of scale. While the City believes this is the best solution, the City is committed to cooperate with other governmental entities and work towards a long-range sewage treatment system that is the best for the region. Future sewage and wastewater facility plans, and related planning efforts, shall take into account and plan for a regional sewage system and facility other than the current Kellogg Creek plant.

Amendments to Milwaukie Municipal Code
Title 19—Zoning Ordinance

Underlined text is to be inserted

Strikeout ~~text~~ is to be deleted

SECTION 19.321 COMMUNITY SERVICE OVERLAY USE:

19.321 Community Service Overlay ~~Zone Use~~ CSOU:

19.321.1 Purpose. This section ~~provides for the~~allows development of certain special 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 in one district but not another. This section also provides standards and procedures for review and approval of applications for such community uses including utility and recreational facilities. Community service uses may be sited in any zone, except where expressly prohibited, if they meet the standards of this section. ~~The community service overlay will function as an overlay designation for public and private institutions in most zones and districts. Approval of a CSU does not change the zoning of the property.~~

19.321.2 Applicability. Any community service use shall be subject to the provisions of this section, ~~unless otherwise directed in primary zones.~~ 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, daycare centers, private kindergartens;
2. Government office buildings for local, state, or federal government such as a city hall, courthouse, police station ~~correctional facilities~~, or other similar buildings;
3. Hospital;
4. Cemetery;
5. Nursing or convalescent home;
6. ~~Churches~~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 related any other facilities used for production, treatment, and distribution of the municipal water supply;
3. Electrical power substations;
4. Repealed by Ord. 1910;
5. Public works shops, road shops, yards, bus barns, equipment and material storage yards, and other similar uses;
6. Repealed by Ord. 1910;
7. Repealed by Ord. 1910;
8. Public transit facilities;
9. Passenger terminal;
10. Other similar uses as determined by the planning commission.

C. Recreation Facilities-Public or Private.

1. Private club, ~~fraternal organization~~ lodge, grange;
2. Public and/or privately owned parks including and golf courses;
3. Pedestrian and bicycle trails~~The 40-Mile Loop;~~
4. Public or private recreational facilities such as pools, gyms, indoor and outdoor sports courts or fields, and associated facilities;
45. 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.

19.321.3. (Reserved for Future Use)

19.321.34 Notice Requirements. Except as provided in Section 19.321.45C and 19.321.4214 Wireless communication facilities, the planning commission shall hold a public hearing for a community service use request per the procedures outlined in subsection 19.1011.3-Minor Quasi-Judicial Review, Community Service Overlay Use.

19.321.45 Standards for Authority to Grant or Deny a Community Service Uses.

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 of 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 19.321.710-19.321.4014 are met; and

3. The hours and levels of operation of the proposed use arecan be adjusted to be 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.

19.321.6 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 standards in 19.321.5 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 Cityplanning commission, or the community development director in the case of a minor change, 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 community development planning director may approve minor modifications to an approved community service use changes in any development permit pursuant to a type I procedure, provided that such change modification:~~

1. ~~Does not increase the intensity of any use, or the density of residential use;~~
2. ~~Meets all requirements of the underlying zone relating to building size and location and off-street parking and the specific standards of Title 19;~~
3. ~~Does not result in significantly affect adjacent property or uses, will not cause any deterioration or loss of any protected natural feature or open space, and does not negatively affect nearby properties nor significantly affect any public facility; and~~
4. ~~Does not affect 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.~~

~~D. The planning commission will hold a public hearing on the establishment of the proposed community service use. If the commission finds that the establishment of the community service use is in the general public interest and that the benefits to the public outweigh the possible adverse impacts of the use, then the commission may approve the designation of the site for community service use. If the commission finds otherwise, the application may be denied. This approval will result in the application of the community service overlay designation to a particular piece of land, subject to any conditions the planning commission may attach.~~

19.321.7 (Reserved for Future Use)

Renumber subsequent subsections as follows:

- **19.321.58**
- **19.321.69**
- **19.321.710**
- **19.321.811**

~~19.321.9 Specific Standards for Churches, Convents and Related Facilities.~~

~~A. A church spire may exceed the maximum height limitation.~~

~~B. The lot is of sufficient size to allow all required yards to be equal to at least two thirds (2/3) of the height of the principal structure.~~

~~C. (Repealed by Ord. 1893)~~

~~D. Fifteen percent (15%) of the total site is to be landscaped.~~

~~E. Off street parking as per Chapter 19.500.~~

~~19.321.4012 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 twenty (20) trips per day are exempted from this subsection B.~~

~~C. When located in a residential zone, lot area shall be sufficient to allow required setbacks that are equal to a minimum of two thirds (2/3) of 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 fifty (50) feet provided subsection C above 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 section, "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.

Renumber subsequent subsections as follows:

- **19.321.4413**
- **19.321.4214**, including self-references and Table within this subsection

Update all references to "CSO" or "community service overlay" to "CSU" or "community service use" as follows:

- **15.32.030.A**
- **19.202**
- **19.505.1**
- **19.507.1**
- **19.1011.3.C**
- **19.1410.4.B.2**
- **19.1504.1 Table 1**

Amendments to Milwaukie Comprehensive Plan

CHAPTER 3, ENVIRONMENTAL AND NATURAL RESOURCES

Air, Water and Land Resources Quality Element, Objective 4, Policy 1

Milwaukie will continue to support and participate in regional planning programs to improve sanitary sewer services in the area. The City will continue to cooperate with Clackamas County Service District #1 (CCSD1) for the collection and treatment of sanitary sewage. Such cooperation shall include cooperation with CCSD1 regarding regionalized wastewater treatment and replacement or major overhaul of the Kellogg Creek Wastewater Treatment plant to eliminate impacts of that plant on the City and the neighborhood.

CHAPTER 4- LAND USE:

Recreational Needs Element, Objective 7 Policy 5

The Downtown and Riverfront Land Use Framework Plan anticipates redevelopment of the Kellogg Wastewater Treatment Plant site. The City will make reasonable efforts to bring about the decommissioning of the Kellogg Wastewater Treatment Plant in an expeditious but orderly fashion that assures proper sewage treatment for Milwaukie citizens while effectuating a transition to treatment at another location. Reasonable efforts may include revising the Zoning Ordinance to make the existing facility a nonconforming use and restricting any modification of the sewage treatment use at that site. Riverfront access will be maintained with any redevelopment of the treatment plant site.

CHAPTER 5 – TRANSPORTATION/PUBLIC FACILITIES/ENERGY CONSERVATION:

Public Facilities and Services Element, Objective 5, Policy 1

The City will continue to cooperate with the Clackamas County Service District No. 1 in contracting for capacity of the Kellogg Creek Treatment Plant or other plant or plants. The City will comply with Federal and State clean water requirements in managing the wastewater collection system.

Public Facilities and Services Element, Objective 5, Policy 5

The City will use best efforts to decommission the Kellogg Creek Wastewater Treatment Plant and will cooperate with the County, county service districts, Metro, other affected cities, and other parties in examining feasible alternatives for sewage disposal in the transition from the Kellogg plant to some other

sewage treatment facility. The existing plant is aging and will continue to need constant expensive upgrades. A new plant with modern technology and design and economies of scale will provide better sewage treatment and environmental protection. The City's preferred alternative is a regionalized system with a single plant serving all of the area currently served by CCSD No. 1, the Tri-City Service District, and the City of Milwaukie. Such a system would provide for better, more environmentally-friendly sewage treatment, and result in economies of scale. While the City believes this is the best solution, the City is committed to cooperate with other governmental entities and work towards a long-range sewage treatment system that is the best for the region. Future sewage and wastewater facility plans, and related planning efforts, shall take into account and plan for a regional sewage system and facility other than the current Kellogg Creek plant.

**Amendments to Milwaukie Municipal Code
Title 19—Zoning Ordinance**

SECTION 19.321 COMMUNITY SERVICE USE:

19.321 Community Service Use CSU:

19.321.1 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.

19.321.2 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, daycare 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. Repealed by Ord. 1910;
5. Public works shops, road shops, yards, bus barns, equipment and material storage yards, and other similar uses;
6. Repealed by Ord. 1910;
7. Repealed by Ord. 1910;
8. Public transit facilities;
9. Passenger terminal;
10. 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.

19.321.3. (Reserved for Future Use)

19.321.4 Notice Requirements. Except as provided in Section 19.321.5C and 19.321.14 Wireless communication facilities, the planning commission shall hold a public hearing for a community service use request per the procedures outlined in subsection 19.1011.3-Minor Quasi-Judicial Review, Community Service Use.

19.321.5 Standards for Community Service Uses.

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 19.321.10-19.321.14 are 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.

19.321.6 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 standards in 19.321.5 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 use pursuant to a type I procedure, 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.

19.321.7 (Reserved for Future Use)

Renumber subsequent subsections as follows:

- **19.321.5 becomes 19.321.8**
- **19.321.6 becomes 19.321.9**
- **19.321.7 becomes 19.321.10**
- **19.321.8 becomes 19.321.11**

19.321.12 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 twenty (20) trips per day are exempted from this subsection B.

C. When located in a residential zone, lot area shall be sufficient to allow required setbacks that are equal to a minimum of two thirds (2/3) of 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 fifty (50) feet provided subsection C above 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 section, "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.

Renumber subsequent subsections as follows:

- **19.321.11 becomes 19.321.13**
- **19.321.12 becomes 19.321.14, including self-references and Table within this subsection**

Update all references to "CSO" or "community service overlay" to "CSU" or "community service use" as follows:

- **15.32.030.A**
- **19.202**
- **19.505.1**
- **19.507.1**
- **19.1011.3.C**
- **19.1410.4.B.2**
- **19.1504.1 Table 1**



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenny Asher, Community Development and Public Works Director

From: Katie Mangle, Planning Director *KM*

Subject: Amendments to the Milwaukie Municipal Code and Comprehensive Plan that address Community Service uses and the Kellogg Creek Wastewater Treatment Plant (ZA-06-01/CPA-06-01)

Date: June 13, 2006 for June 20, 2006 Hearing

Actions Requested

1. **Approval to amend the *Milwaukie Municipal Code Section 19.321 – Community Service Overlay*.** Amendments would change the name to "Community Service Use," clarify the procedures and standards for approving such a use and modernize the language in the code.
2. **Approval to amend the *Comprehensive Plan Chapter 4 - Recreational Needs Element; Chapter 5 - Transportation/Public Facilities/Energy Conservation, Public Facilities and Services Element; and Milwaukie Municipal Code subsections 19.321.7 and 19.321.3.*** These amendments would clearly state the City's policy to make reasonable efforts to bring about the decommissioning of the Kellogg Creek wastewater treatment plant, make the plant a Nonconforming Use, and set a deadline for removing Nonconforming Community Service Uses.

On May 23, 2006, the Planning Commission held a public hearing on the amendments and unanimously recommended that City Council approve the amendments with revisions as required to ensure flexibility to meet state and federal mandates. The amendments meet the approval criteria set forth in the Milwaukie Municipal Code and Comprehensive Plan. This includes consistency with unamended portions of the Comprehensive Plan, Oregon statewide planning goals, and regional policies (see Attachment 6, Summary of Policy Compliance).

Background on Action 1 – Housekeeping amendments to Community Service Overlay

The Community Service Overlay (CSO) is a land use tool that allows the City to manage the development of uses that provide public benefit. Certain uses, including public and religious institutions, schools, and parks, are allowed in most zoning districts when they meet the

standards for a CSO. CSO approvals are site specific and subject to the development standards of the underlying zone.

The proposed amendments to Milwaukie Municipal Ordinance section 19.321 (see Attachment 2) modify the title, text and structure of the section to improve comprehensibility and clarify standards and procedures for approving Community Service Uses. Most of these revisions fall under the category of “code maintenance,” and are not intended to change the policy nor intent of the code. The proposed amendments to Milwaukie Municipal Code Section 19.321 include many revisions to the text. Key changes are intended to accomplish the following:

- Clarify the meaning of the CSO by deleting “Zone” from the section title, and stating that approval of a CSO does not change the underlying zoning of the property.
- Neutralize gender and religious references by substituting “religious institutions” for “Churches”, and deleting “fraternal organizations” from the provision allowing a “private club, fraternal organization, lodge, grange.”
- Clarify the standards and procedures for reviewing a Community Service Use.
- Clarify the definition of a “minor modification” to an approved Community Service Use, as well as the criteria for approval.
- Apply the same development standards to public, private, and religious institutions, with two exceptions. Religious institutions will still have the ability to include a spire that exceeds height limitations, and will continue to be held to a lower landscaping standard. Applying the same standards to religious and non-religious institutions will protect the City from claims under the federal Religious Land Use and Institutionalized Persons Act of 2000.

Background on Action 2 – Amendments to Address the Kellogg Creek Treatment Plant

The City of Milwaukie has long envisioned improvements to the Willamette riverfront that maximize the use and benefits of this city resource. This vision is reflected in the goals of the *Downtown and Riverfront Land Use Framework Plan*, the *Comprehensive Plan*, and was also referenced in the City’s August 2005 Intergovernmental Agreement with the Clackamas County Service District #1 to implement the Clearwater Plan.

The Kellogg Creek wastewater treatment plant is located on the riverfront, and the City’s long-term goals, as expressed in the *Comprehensive Plan* (Chapter 5, Objective 5, Policy 5), have been to decommission the plant. The *Downtown Land Use Framework Plan* envisions redevelopment of the Kellogg site with uses that are more supportive of downtown and nearby neighborhoods. Thus far, the City’s *Comprehensive Plan* policies have not been effective in achieving the goal of eliminating the social, economic and environmental impacts of the plant.

The proposed amendments are intended to strengthen the City’s policy to actively seek alternatives to continued use of the Kellogg Creek plant, limit expansion of the plant, and eliminate the plant’s social, economic and environmental impacts.

Comprehensive Plan Amendments

The proposed *Comprehensive Plan* amendments (see attachment 4) would strengthen the City’s policy to “make reasonable efforts to bring about” the decommissioning of the Kellogg Creek Wastewater Treatment Plant. The *Comprehensive Plan* amendments clearly state the policy to pursue decommissioning of the Kellogg Creek plant while responsibly providing

wastewater treatment service for Milwaukie residents and businesses and continuing to cooperate with the County and other agencies in examining feasible alternatives. In summary, the amendments achieve the following:

- The policy relating to the Kellogg Creek plant site will be revised to state that the City's policy is to "*make reasonable efforts to bring about the decommissioning of the Kellogg Wastewater Treatment Plant in an expeditious but orderly fashion that assures proper sewage treatment for Milwaukie citizens while effectuating a transition to treatment at another location.*"
- The policy relating to contracting with CCSD1 will be revised to refer to "the Kellogg Creek Treatment Plant *or other plant or plants.*"
- The policy relating to examination of alternatives for decommissioning the Kellogg Creek plant will be revised to state that the City will "*use best efforts to decommission*" the plant while cooperating with other affected agencies. It requires future City planning efforts to consider a "*regional sewage system and facility other than the Kellogg Creek plant.*"

Zoning Code Amendments

The proposed zoning amendments related to major utility facilities (see Attachment 2) implement the policies set forth in the Comprehensive Plan. They are intended to achieve the following:

- Specify that major utility facilities, including sewage treatment plants, are generally not a permitted Community Service Use unless all impacts of such a facility are reduced to that of an allowed CSU (such as a pump station).
- Address Nonconforming Community Service Uses in a new section. This section will allow nonconforming uses to remain in use through 2015. It prohibits expansion, upgrades, or remodeling of the use, except as required to abate nuisances declared by the City or comply with federal or state statutes, regulations or permits.
- Establish a nonconforming major utility fee for nonconforming major utilities that remain in use after December 31, 2015.
- Address the community's desire and the City's goal to decommission the Kellogg Creek plant, cooperate with regional partners, plan for proper sewage treatment service, and maintain public access to the riverfront.

Response to Comments in Opposition

At the May 23, 2006, Planning Commission hearing on the proposed amendments, testimony was submitted for and against the proposal. Mr. Tom Sponsler submitted comments against the amendments on behalf of Clackamas County Sewer District No. 1 (CCSD1) and the cities of Happy Valley and Gladstone. In summary, the comments raised the following points:

Comment: *The amendments are inconsistent with Statewide Planning Goal 2, which requires coordination with other governments.*

Response: The amendments are not inconsistent with Goal 2, because the Comprehensive Plan amendments require coordination with CCSD1 and others in developing alternatives to the continued use of the Kellogg Wastewater Treatment Plant in the future. Furthermore, the City has coordinated with CCSD1 and other affected entities in developing a plan for regional wastewater treatment, and signed an intergovernmental agreement with CCSD1 that provided for regionalized wastewater treatment well before the deadline for removal of the Kellogg Creek Wastewater

Treatment Plant. The City remains committed to regional coordination and this commitment is reflected in the Comprehensive Plan amendments.

Comment : *CCSD1 comments that the proposed code amendments are inconsistent with Statewide Planning Goal 6, which protects water quality, and with Policy 1 of Objective 4 of the Air, Water, and Land Resources Quality Element of Chapter 3 of the Comprehensive Plan.*

Response: The City has modified the proposed code amendments to clarify that modifications to the plant will be permitted when mandated to comply with state or federal safety regulations or permits. The code amendments, as revised, are consistent with Goal 6.

Comment: *The City's amendments may cause CCSD1 to consider termination of its wholesale agreement with the City.*

Response: The City expects that CCSD1 will abide by the same standard of cooperation as the City, and that the wholesale agreement (or a replacement agreement) will remain in effect for the good of the region, Milwaukie, the environment, and CCSD1 ratepayers. The Comprehensive Plan policies provide for continued cooperation between the City and CCSD1 and a continued contractual relationship; the policy does not compel CCSD1 to consider termination in any way.

Comment: *Deletion of the provision regarding public use of the CCSD1 site is inconsistent with statewide planning goals and several provisions in the Comprehensive Plan.*

Response: The amendment calls for ongoing public access to the property. The zoning for the site includes Downtown Open Space, which will require public access to the river if the site is redeveloped.

Comment: *The amendments remove the commitment to examine feasible alternatives for decommissioning Kellogg.*

Response: The plan amendments explicitly call for examining feasible alternatives that allow a transition from Kellogg to another treatment facility.

Comment: *Alternative methods are not analyzed - the City must have a realistic plan for wastewater treatment.*

Response: The City and CCSD1 have collaborated on a realistic plan for regionalized wastewater treatment that does not involve the Kellogg Creek plant. Such a plan was adopted and then rescinded by CCSD1 in 2005. The City and CCSD1 agreed to a regionalized wastewater treatment plan that provided improved quality and service and ultimately lower rates. That plan remains a viable and better option for wastewater treatment than continued use of the Kellogg Creek plant. CCSD1 staff has conducted extensive analysis of alternative methods for treatment, and the City has participated in these analyses.

Comment: *The proposed amendment violates Comprehensive Plan Chapter 5, Objective 5, Policy 1, which provides: "The City will continue to cooperate with the Clackamas County Service District No. 1 in contracting for capacity of the Kellogg Creek Treatment Plant. The City will comply with Federal and State clean water requirements in managing the wastewater treatment system."*

Response: To avoid any confusion, the City is amending this Policy to state that the City will contract for the capacity of the Kellogg Creek Treatment Plant *or other plant or plants*. The Comprehensive Plan provisions continue to require compliance with federal

and state clean water requirements, and the code amendments allow modifications needed to comply with federal and state statutes, regulations and permits. The proposed amendments are not inconsistent with this policy, as amended.

Comment: *The proposed comprehensive plan amendments are not consistent with the criteria for proposed amendments in Chapter 2, Objective 1, Policy 7.*

Response: The following sets out the City's analysis of each of these criteria:

- *Conformance with the Comprehensive Plan, its goals, policies and spirit.*
The amendments expressly require continued coordination, consistent with other plan policies. They are also consistent with provisions relating to the provision of public facilities and services and the protection of water quality because, while they call for eventual removal of the existing sewage treatment plant, they also call for a cooperative and coordinated effort to provide a better sewage treatment system to replace the aging plant. The policies reinforce the existing policy that the Kellogg Creek Treatment Plant must be decommissioned.
- *Public need for the change.*
The Kellogg Creek Wastewater Treatment Plant is sited in the Willamette Greenway zone, between the Island Station neighborhood and Milwaukie's revitalizing downtown. The change is needed to enhance the City's riverfront and environment, promote the economic development of the downtown, protect the Island Station residential neighborhood from the foul odors emanating from the plant, and provide a better wastewater treatment system. The Kellogg Creek Treatment Plant is aging and a new plant would provide better and more efficient treatment with fewer environmental impacts through economies of scale. The City and CCSD1 require a treatment plant that does not need substantial changes every few years due to old design and old components.
- *Public need is best satisfied by this particular change.*
The existing language has not achieved the goal of relocating the treatment plant, and this particular change has been drafted to attempt to achieve results in a timely manner. The continued existence of the Kellogg Treatment Plant and the rescission of the regionalized plan that would have decommissioned the plant by CCSD1 demonstrate that a change in policy was needed.
- *The change will not adversely affect the health, safety and welfare of the community.*
The relocation of sewage treatment from the Kellogg Creek plant to a more modern plant as part of a regional system would promote the health, safety and welfare of the entire North Clackamas County community. It would also provide additional benefits to the local community by removing an odor nuisance that plagues the Island Station residential neighborhood. The proposed amendment makes it clear that the City is to work with Clackamas County, the service district or others parties to develop an alternate site for sewage treatment and a regionalized system.
- *The change is in conformance with applicable Statewide Planning Goals.*
The amendments are in conformance with applicable statewide planning goals, as described in detail in Attachment 6, Summary of Policy Compliance.
- *The change is consistent with the Metro Growth Management Functional Plan and applicable regional policies.* The findings submitted to and approved by the Planning

Commission address the Metro Growth Management Functional Plan, and Metro staff concur.

An additional regional policy with which the City must comply is the Regional Waste Water Management Plan (RWWMP), adopted by Metro in 1980 and last updated in 1993. The RWWMP requires jurisdictions to coordinate their plans with Metro, especially regarding modification of wastewater treatment facilities. The amendments comply with RWWMP because they do not change the City's role in the wastewater collection system, do not modify the CCSD1 boundary, and emphasize continued coordination with other jurisdictions in planning for future wastewater treatment. That coordination includes coordination with Metro, which has reviewed the City's proposed amendments and does not object to them. In addition, the RWWMP provides neither rules nor guidance for local government but rather describes existing systems. It has been periodically changed after the fact to describe changes that have occurred, such as annexations, changes in boundaries and other actions that affect the system. It does not in any way preclude changes such as those called for by the City's amendments, though it may require amendments as modifications occur in the future.

Comment: *The proposed amendments violate the terms of the City's agreement with CCSD1 for sewage treatment.*

Response: The City knows of no such violation, and these have not been specified by the opponents of the amendments.

Comment: *The proposed amendments would result in a violation of Federal law.*

Response: The City has amended the proposed language to assure that the City would not cause the Kellogg Treatment Plant to violate federal law and the language of Section 19.321.7 expressly allows improvement as needed to comply with all state and federal laws, regulations and permits.

Comment: *The proposed amendment is inconsistent with the adopted City public facilities plan.*

Response: The existing Sewage Facilities Plan has a planning period that ends prior to December 31, 2015. The proposed amendments allow the plant to remain in place to December 31, 2015. The amendments are therefore not inconsistent

Comment: *The City does not have authority to control plant operations.*

Response: The City has statutory authority to control land uses (ORS 197.175). It has the Charter authority to do anything that is not contrary to or preempted by federal or state constitution or law. Land use includes not just structures, but operations. The City has land use and charter authority to assure that operations of facilities are consistent with land use standards.

Comment: *The city has no authority to impose a civil penalty on CCSD1.*

Response: If CCSD1 violates a City ordinance, it must pay the same penalty as any other entity.

Comment: *The City does not have the authority to tax CCSD1 and that the nonconforming major utility fee as stated in the draft ordinance would constitute a tax.*

Response: The City amended the proposed language so that the fee will be set to recover the costs and impacts of the operations of the facility. As such, it is a fee and not a tax. The City of Milwaukie may impose a fee.

Comment: *The proposed nonconforming use fee would take effect immediately, rather than in 2016.*

Response: The language of the provision has been revised to make it clear that the fee would be imposed only after December 31, 2015.

Recommendation

Amending the Zoning Ordinance and the Comprehensive Plan is a legislative action, which requires the City Council to conduct a hearing and make a decision. Staff recommends that the Council approve the amendments and adopt the findings as outlined in Attachment 1.

Concurrence

The Planning Commission unanimously recommended that the Council approve the amendments. The amendments have been reviewed and approved by the City Manager, City Attorney, Community Development and Public Works Director, and Engineering Director.

Fiscal Impact

None resulting from the proposed amendments. Indirect fiscal impacts may result from the long-term closure or maintenance of the treatment plant. Such impacts include changes to the contracted rates charged for CCSD1 service; fees collected due to nuisances or continued nonconformance of the Kellogg Creek plant past 2015; increases to the value of properties surrounding the plant site. A 2002 study estimated that closure of the plant would nearly double the value of projected new investment in downtown Milwaukie (\$103 million with the closure, versus up to \$53 million without).¹

Work Load Impacts

The amendments will reduce workload slightly, as they clarify several procedural and land use issues in the Code. For example, the City currently applies different development standards to religious and non-religious institutions. This often creates confusion on the part of the applicant, and requires more staff time to explain and defend. The amendments will apply the same standards to all non-educational institutions. In addition, applying the same standards to religious and non-religious institutions will protect the City from claims under the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

Alternatives

1. Do not approve the amendments. If the Council does not approve the amendments, the MMC section 19.321 will continue to function as it has in the past; the Kellogg Treatment Plant will not be explicitly addressed in the Code; the County could propose expansion of the Plant through a CSO application process, which the Planning Commission and City Council would be required to consider and potentially approve based on existing code language.

¹ Johnson Gardner, LLC. Memorandum Regarding Decommissioning of Kellogg Treatment Facility. January 22, 2002.

2. Approve only one of the two actions - Action 1, the housekeeping amendments to MMC section 19.321. Only approving Action 1 will make the Community Service Use code more effective, but the Kellogg Treatment Plant will not be explicitly addressed in the Code and the County could propose expansion of the Plant through a CSO application process, which the Planning Commission and City Council would be required to consider and potentially approve based on existing code language.
3. Approve only one of the two actions - Action 2, zoning code and Comprehensive Plan amendments that address the Kellogg Creek Wastewater Treatment Plant. Only approving Action 2 would leave the title and remaining sections of the code language unchanged

Attachments

1. Findings in Support of Approval
2. Strikeout version of revisions to zoning ordinance 19.321 Community Service Overlay.
3. Clean version of revisions to zoning ordinance 19.321 Community Service Overlay.
4. Strikeout version of revisions to Comprehensive Plan Chapters 3, 4, and 5.
5. Clean version of revisions to Comprehensive Plan Chapters 3, 4, and 5.
6. Summary of Policy Compliance
7. Minutes from the Planning Commission hearing on May 23, 2006
8. Comments from Metro
9. Comments from CCSD

ATTACHMENT 1
Findings in Support of Approval

1. The City of Milwaukie Planning Commission recommended that the City Council adopt the proposed amendments, with revisions to address the need to comply with clean water regulations.
2. Public notice has been provided and a public hearing has been conducted in accordance with the Milwaukie Zoning Ordinance and the Comprehensive Plan. The City provided written notice of the hearing and a copy of the proposed amendments to both the Clackamas County Administrator and to Clackamas County Service District No. 1.
3. The proposed Zoning Code amendments fulfill the approval criteria found in 19.904.1 and 19.905.1. They are consistent with the Comprehensive Plan, the Metro Urban Growth Management Functional Plan, Regional Waste Water Management Plan, and Oregon Statewide Planning Goals.
4. The proposed Comprehensive Plan amendments fulfill the approval criteria found in Comprehensive Plan Chapter 2 - Amendments and Review Process. They are consistent with all unamended portions of the Comprehensive Plan, the Metro Urban Growth Management Functional Plan, Regional Waste Water Management Plan, and the Oregon Statewide Planning Goals.

FINDINGS IN RESPONSE TO COMMENTS BY TOM SPONSLER OF BEERY, ELSNER & HAMMOND ON BEHALF OF Clackamas County Sewer District No.1 (CCSD1), HAPPY VALLEY AND GLADSTONE

5. Clackamas County Sewer District No.1 and the Cities of Happy Valley and Gladstone jointly submitted comments objecting to the proposed amendments. Those comments will be referred to in these findings as the "CCSD1 comments."
6. **Comment:** The proposed amendments are inconsistent with Statewide Planning Goal 2, which requires coordination with other governments. **Response:** The amendments are not inconsistent with Goal 2, because the Comprehensive Plan amendments require coordination with CCSD1 and others in developing alternatives to the continued use of the Kellogg Wastewater Treatment Plant in the future. Furthermore, the City has coordinated with CCSD1 and other affected entities in developing a plan for regional wastewater treatment, and signed an intergovernmental agreement with CCSD1 that provided for regionalized wastewater treatment well before the deadline for removal of the Kellogg Creek Wastewater Treatment Plant. The City remains committed to regional coordination and this commitment is reflected in the Comprehensive Plan amendments.
7. **Comment:** CCSD1 comments that the proposed code amendments are inconsistent with Statewide Planning Goal 6, which protects water quality, and with Policy 1 of Objective 4 of the Air, Water, and Land Resources Quality Element of Chapter 3 of the Comprehensive Plan. **Response:** To ensure that there is no misunderstanding that water quality is protected, the City has modified the proposed code amendments to clarify that modifications to the plant will be permitted when mandated to comply with state or federal safety regulations or permits. The code amendments, as revised, are consistent with Goal 6. The code amendment is not inconsistent and in no way prevents the City from participating in the

regional planning process. The policy also provides for continued cooperation between the City and CCSD1 relating to collection and treatment of sanitary sewage, and the code amendments do not prevent continued cooperation. The City expects that it will continue to work with CCSD1 on sewage issues.

8. **Comment:** The City's amendments may cause CCSD1 to consider termination of its wholesale agreement with the City. **Response:** The City expects that CCSD1 will abide by the same standard of cooperation as the City, and that this wholesale agreement (or a replacement agreement) will remain in effect for the good of the region, Milwaukie, the environment and CCSD1 ratepayers. The Comprehensive Plan policies provide for continued cooperation between the City and CCSD1 and a continued contractual relationship; the policy does not compel CCSD1 to consider termination in any way.
9. **Comment:** Deletion of the provision regarding public use of the CCSD site is inconsistent with statewide planning goals and several provisions in the Comprehensive Plan. **Response:** The amendment calls for ongoing public access to the property. The zoning for the site includes Downtown Open Space, which will require public access to the river if the site is redeveloped.
10. **Comment:** The amendments remove the commitment to examine feasible alternatives for decommissioning Kellogg. **Response:** The plan amendments explicitly call for examining feasible alternatives that allow a transition from Kellogg to another treatment facility. The plan amendments as a whole still address cooperation in examining feasible alternatives that will allow the transition from Kellogg to another treatment facility. These provisions are not inconsistent with any Comprehensive Plan Goal.
11. **Comment:** Alternative methods are not analyzed - the City must have a realistic plan for wastewater treatment. **Response:** The City and CCSD1 have collaborated on a realistic plan for regionalized wastewater treatment that does not involve the Kellogg Creek plant. The City and CCSD1 agreed to a regionalized wastewater treatment plan that provided improved quality and service and ultimately lower rates. That plan remains a viable and better option for wastewater treatment than continued use of the Kellogg Creek plant. CCSD1 staff has conducted extensive analysis of alternative methods for treatment.
12. **Comment:** The proposed amendment violates Comprehensive Plan Chapter 5, Objective 5, Policy 1, which provides: "The City will continue to cooperate with the Clackamas County Service District No. 1 in contracting for capacity of the Kellogg Creek Treatment Plant. The City will comply with Federal and State clean water requirements in managing the wastewater treatment system." **Response:** To avoid any confusion, the City is amending this Policy to state that the City will contract for the capacity of the Kellogg Creek Treatment Plant or other plant or plants. The Comprehensive Plan provisions continue to require compliance with federal and state clean water requirements, and the code amendments allow modifications needed to comply with federal and state statutes, regulations and permits. The proposed amendments are not inconsistent with this policy, as amended.
13. **Comment:** The proposed comprehensive plan amendments are not consistent with the criteria for proposed amendments in Chapter 2, Objective 1, Policy 7. **Response:** The following sets out the City's analysis of each of these criteria:
 - *Conformance with the Comprehensive Plan, its goals, policies and spirit.*

The amendments expressly require continued coordination, consistent with other plan policies. They are also consistent with provisions relating to the provision of public facilities and services and the protection of water quality because, while they call for eventual removal of the existing sewage treatment plant, they also call for a cooperative and coordinated effort to provide a better sewage treatment system to replace the aging plant. The policies reinforce the existing policy that the Kellogg Creek Treatment Plant must be decommissioned.

- *Public need for the change.*

The Kellogg Creek Wastewater Treatment Plant is sited in the Willamette Greenway zone, between the Island Station neighborhood and Milwaukie's revitalizing downtown. The change is needed to enhance the City's riverfront and environment, promote the economic development of the downtown, protect the Island Station residential neighborhood from the foul odors emanating from the plant, and provide a better wastewater treatment system. The Kellogg Creek Treatment Plant is aging and a new plant, especially a regionalized treatment system and plant, would provide better and more efficient treatment with fewer environmental impacts through economies of scale. The City and CCSD1 need a treatment plant that does not require substantial changes every few years due to old design and old components.

- *Public need is best satisfied by this particular change.*

The existing language has not achieved the goal of relocating the treatment plant, and this particular change has been drafted to attempt to achieve results in a timely manner. The continued existence of the Kellogg Treatment Plant and the rescission of the regionalized plan that would have decommissioned the plant by CCSD1 demonstrate that a change in policy was needed.

- *The change will not adversely affect the health, safety and welfare of the community.*

The relocation of sewage treatment from the Kellogg Creek plant to a more modern plant as part of a regional system would promote the health, safety and welfare of the entire North Clackamas County community. It would also provide additional benefits to the local community by removing an odor nuisance that plagues the Island Station residential neighborhood. The proposed amendment makes it clear that the City is to work with Clackamas County, the service district or others parties to develop an alternate site for sewage treatment and a regionalized system.

- *The change is in conformance with applicable Statewide Planning Goals.*

The amendments are in conformance with applicable statewide planning goals, as described in detail in Attachment 6, Summary of Policy Compliance.

- *The change is consistent with the Metro Growth Management Functional Plan and applicable regional policies.* The findings submitted to and approved by the Planning Commission address the Metro Growth Management Functional Plan, and Metro staff concur.

14. **Comment:** The proposed amendments violate the Metro Code. **Response:** As discussed in Finding Number 13 above, the amendments are consistent with applicable Metro provisions. CCSD1's comments refer to a Regional Wastewater Management Plan. The original findings did not include an analysis of consistency with the Regional Waste Water Management Plan (RWWMP), adopted by Metro in 1980 and last updated in 1993. The

RWWMP requires jurisdictions to coordinate their plans with Metro, especially regarding modification of wastewater treatment facilities. The amendments comply with RWWMP because they do not change the City's role in the wastewater collection system, do not modify the CCSD1 boundary, and emphasize continued coordination with other jurisdictions in planning for future wastewater treatment. That coordination includes coordination with Metro, which has reviewed the City's proposed amendments and does not object to them. In addition, the RWWMP provides neither rules nor guidance for local government but rather describes existing systems. It has been periodically changed after the fact to describe changes that have occurred, such as annexations, changes in boundaries and other actions that affect the system. It does not in any way preclude changes such as those called for by the City's amendments, though it may require amendments as modifications occur in the future.

15. **Comment:** The proposed amendments violate the terms of the City's agreement with CCSD1 for sewage treatment. **Response:** The City knows of no such violation, and these have not been specified by the opponents of the amendments. The language for Code Section 19.321.7 will allow amendments to the Kellogg Plant as needed to comply with applicable regulations. CCSD1's comments relating to the pretreatment program are irrelevant because these amendments in no way affect the City's pretreatment program, which remains in effect.
16. **Comment:** The proposed amendments would result in a violation of Federal law. **Response:** The City has amended the proposed language to assure that the City would not cause the Kellogg Treatment Plant to violate federal law and the language of Section 19.321.7 expressly allows improvement as needed to comply with all state and federal laws, regulations and permits.
17. **Comment:** The proposed amendment is inconsistent with the adopted City public facilities plan. **Response:** The existing Sewage Facilities Plan has a planning period that ends prior to December 31, 2015. The proposed amendments allow the plant to remain in place to December 31, 2015. The amendments are therefore not inconsistent
18. **Comment:** The City does not have authority to control plant operations. **Response:** The City has statutory authority to control land uses (ORS 197.175). It has the Charter authority to do anything that is not contrary to or preempted by federal or state constitution or law. Land use includes not just structures, but operations. The City has land use and charter authority to assure that operations of facilities are consistent with land use standards.
19. **Comment:** The city has no authority to impose a civil penalty on CCSD1. **Response:** If CCSD1 violates a City ordinance, it must pay the same penalty as any other entity.
20. **Comment:** The City does not have the authority to tax CCSD1 and that the nonconforming major utility fee as stated in the draft ordinance would constitute a tax. **Response:** The City amended the proposed language so that the fee will be set to recover the costs and impacts of the operations of the facility. As such, it is a fee and not a tax. The City of Milwaukie may impose a fee.
21. **Comment:** The proposed nonconforming use fee would take effect immediately, rather than in 2016. **Response:** The language of the provision has been revised to make it clear that the fee would be imposed only after December 31, 2015.